PRAVNI MONITORING MEDIJSKE SCENE U SRBIJI

LEGAL MONITORING OF THE SERBIAN MEDIA SCENE

Publikacija XI
Publication XI

ANEM

Ova Publikacija je realizovana uz finansijsku podršku organizacije Civil Rights Defenders. Izneti stavovi pripadaju isključivo autorima i ne moraju predstavljati zvaničan stav Civil Rights Defenders-a.

This Publication is financially supported by the Civil Rights Defenders. The contents of this Publication are the sole responsibility of the authors and do not necessarily reflect the views of the Civil Rights Defenders.

FONDACIJA ZA OTVORENO DRUŠTVO, SRBIJA
OPEN SOCIETY FOUNDATION, SERBIA

Ova Publikacija je realizovana uz finansijsku podršku Fondacije za otvoreno društvo, Srbija. Izneti stavovi pripadaju isključivo autorima i ne moraju predstavljati zvaničan stav Fondacije za otvoreno društvo, Srbija.

This Publication is financially supported by the Open Society Foundation, Serbia. The contents of this Publication are the sole responsibility of the authors and do not necessarily reflect the views of the Open Society Foundation, Serbia.

SADRŽAJ

UVOD **5**

Zašto i kakva Strategija razvoja medijske usluge radija i audio-vizuelnih medijskih usluga nam je potrebna **7**
Miloš Stojković, advokatska kancelarija „Živković&Samardžić“, Beograd

Cenzura i autocenzura u srpskim medijima **9**
Slobodan Kremenjak, advokat

Transparentnost vlasništva u medijima – neophodno, da li i dovoljno? **11**
Davor Glavaš, medijski ekspert

Proces digitalizacije u Republici Srbiji **15**
prof. dr Irini Reljin i Milena Jocić Tanasković, Ministarstvo trgovine, turizma i telekomunikacija

Evropski sud za ljudska prava - Informatori o praksi Suda **19**

TABLE OF CONTENTS

INTRODUCTION **23**

Why Do We Need a Strategy for the Development of Radio and Audiovisual Media Services and What Should This Strategy Be **25**
Miloš Stojković, “Živković&Samardžić”Law Office, Belgrade

Censorship and Self-Censorship in the Serbian Media **28**
Slobodan Kremenjak, attorney at law

Transparency of Media Ownership – Necessary, but is it Sufficient? **30**
Davor Glavaš, media expert

Digitalization Process in Serbia **34**
Prof. Irini Reljin, PhD and Milena Jocić Tanasković, Ministry of Trade, Tourism and Telecommunications

European Court of Human Rights Information Notes on the Court’s Case-Law **38**

PRAVNI MONITORING MEDIJSKE SCENE U SRBIJI

UVOD

Pravni monitoring medijske scene u Srbiji u 2014. godini i nalaz monitoring tima pokazali su sledeće:

Godina na izmaku, 2014-ta, za medijski sektor je značajna zbog stvaranja novog, povoljnijeg regulatornog okvira. U avgustu je usvojen set novih medijskih zakona: Zakon o javnom informisanju i medijima, Zakon o elektronskim medijima i Zakon o javnim medijskim servisima, koji medijsku oblast uređuju u velikoj meri u skladu sa evropskim standardima i regulativom. Bez obzira na određene nedostatke, oni predstavljaju dobar osnov za reforme u medijskom sektoru jer propisuju pravila koja mogu biti ključ za rešavanje dugogodišnjih problema, ali i za napredak sektora. Pored toga, medijski regulatorni okvir unapređen je i izmenama nekih zakona koji nisu medijski (dopune Zakona o elektronskim komunikacijama, kao i prestanak važenja spornih odredaba Zakona o kinematografiji i Zakona o nacionalnim savetima nacionalnih manjina - po osnovu odluka Ustavnog suda o neustavnosti tih odredaba), a koje su otklonile njihov negativni uticaj na medijski sektor. U novembru je Ministarstvo kulture i informisanja donelo i tri pravilnika za implementaciju Zakona o javnom informisanju i medijima, kojima se reguliše postupak sufinansiranja projekata za ostvarivanje javnog interesa u oblasti javnog informisanja, dokumentacija za registraciju medija u Registar, i postupak evidencije predstavnika i dopisništava inostranih medija. Pravilnici treba da obezbede pravilnu implementaciju važnih rešenja tog zakona. Tokom decembra i Regulatorno telo za elektronske medije (REM), koje do februara iduće godine treba da donese niz podzakonskih akata za implementaciju Zakona o elektronskim medijima, objavilo je nacrte tri pravilnika koji se odnose na: zaštitu prava i interesa maloletnika u oblasti pružanja medijskih usluga, utvrđivanje liste najvažnijih događaja i pristup tim događajima, i način izricanja mera pružaocima medijskih usluga; o tim nacrtima će do kraja godine biti sprovedena i javna rasprava. U 2014. godini je otpočeo rad i na novom Zakonu o oglašavanju, od kog se očekuje da pitanje oglašavanja u medijima reguliše u skladu sa medijskim zakonima i evropskim standardima i regulativom; Ministarstvo trgovine, turizma i telekomunikacija bi trebalo da objavi Nacrt zakona do kraja decembra. Usvajanjem tog zakona i podzakonskih akata Regulatornog tela trebalo bi da budu stvoreni uslovi za primenu novih medijskih zakona u punom obimu, pod uslovom da isti budu u skladu sa medijskim zakonima.

Pored unapređenja regulatornog okvira, pozitivnog pomaka je bilo i u oblasti digitalizacije. Pripreme za prelazak na digitalno emitovanje terestričkog TV signala privode se kraju, tehnički i regulatorno, otpočela je i kampanja informisanja građana o procesu digitalizacije, doduše diskutabilnog kvaliteta, a održani su i konsultativni sastanci nadležnog ministarstva sa medijima; međutim, i dalje nije donet cenovnik usluga JP ETV, što medijima značajno otežava da planiraju svoje poslovanje. I proces privatizacije medija je nakon donošenja novih medijskih zakona ponovo pokrenut, posle niza godina odlaganja, i ide svojim tokom; utihnuli su i glasovi protivnika privatizacije, sem retkih izuzetaka, a spekulacije o tome ko će biti potencijalni kupci preostalih neprivatizovanih medija postaju glavna priča u medijskom sektoru, kada je reč o ovoj temi. Značajan pomak u svom radu je napravilo Regulatorno telo za elektronske medije, koje je, pored podzakonskih akata u decembru, u oktobru izdalo dva saopštenja koja pojašnjavaju način na koji će to telo do donošenja odgovarajućeg podzakonskog akta primenjivati određene odredbe Zakona o elektronskim medijima (o audio-vizuelnim komercijalnim komunikacijama i kontroli ujednačenosti nivoa tona svih programskih sadržaja), što je medijima od značajne pomoći; međutim, rad na novoj Strategiji razvoja medijske usluge radija i audio-vizuelnih medijskih usluga, koja je veoma važna za elektronske medije i za razvoj sektora, i dalje kasni.

Pomaka, međutim, nije bilo, kada je reč o napadima i pritiscima na novinare i medije. Tih slučajeva ima u nesmanjenom broju, samo se oblici pritiska menjaju. Problem ostvarivanja slobode izražavanja na Internetu (kao na primer: uklanjanje tekstova, koji kritički govore o vlasti, sa sajtova; hakerski napadi na takve sajtove; ugrožavanje prava na iznošenje mišljenja na društvenim mrežama tokom vanredne situacije u zemlji zbog poplava, itd.) obeležio je prvu polovinu godine i izazvao brojne polemike o cenzuri i autocenzuri u srpskim medijima, da bi u drugoj polovini godine u centru pažnje bio prestanak emitovanja pojedinih debatnih emisija, po mnogima kao direktan rezultat pritiska vlasti. Ti slučajevi su

ponovo otvorili istu polemiku, a poslužili su i kao povod za diskusiju na sednici Odbora za kulturu i informisanje Narodne skupštine o slobodi medija; sednica je, nakon burnih i neprihvatljivih diskusija ispod svakog nivoa koje su iskompromitovale temu, vođenih, kako između poslanika vladajućih i opozicionih stranaka, tako i između predstavnika medijskog sektora, ipak završena usvajanjem zaključaka shodno kojima se očekuje da svi nadležni državni organi reaguju na svaki eventualni pokušaj ugrožavanja uređivačke autonomije i nezavisnosti medija i da energično rade na rasvetljavanju svih slučajeva napada na novinare i medije. Koliko će ti zaključci doprineti promeni odnosa nadležnih organa prema pravima i slobodama novinara i medija, kao i njihovim obavezama da ta prava i slobode štite, ali i odnosa samih novinara i medija prema svojim obavezama i ulozi koju imaju u razvoju društva, ostaje da se vidi u narednom periodu.

Naredna godina, 2015-ta, biće godina završetka privatizacije medija i prelaska na digitalno emitovanje TV programa. Istovremeno, očekuje se da će se u njoj videti i prvi efekti novih medijskih zakona. Stoga je važno da mediji i novinari iskoriste šansu datu novim regulatornim okvirom i izbore se za svoju što bolju poziciju i za neophodne promene u sektoru. Koliko će u tome uspeti, zavisi i od podizanja njihovih kapaciteta za pravilnu implementaciju zakona, kao i jačanja njihove kontrolne uloge u tom procesu.

Stoga, ekspertskim tekstovima u ovoj publikaciji dajemo doprinos jačanju tih kapaciteta novinara i medija. Tekstovi se odnose na važna medijska pitanja i mogu doprineti njihovom boljem razumevanju, a to su: – *Zašto i kakva Strategija razvoja medijske usluge radija i audio-vizuelnih medijskih usluga nam je potrebna* – autor: Miloš Stojković, advokatska kancelarija „Živković & Samardžić“, Beograd; – *Cenzura i autocenzura u srpskim medijima* – autor: advokat Slobodan Kremenjak; – *Transparentnost vlasništva u medijima - neophodno, da li i dovoljno?* – autor: Davor Glavaš, medijski ekspert; – *Proces digitalizacije u Republici Srbiji* – autorke: prof. dr Irini Reljin i Milena Jocić Tanasković, Ministarstvo trgovine, turizma i telekomunikacija. Peti tekst predstavlja sažet prikaz dve presude Evropskog suda za ljudska prava koje se odnose na primenu člana 10 Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda; obe su donete u slučajevima u kojima je utvrđena povreda slobode izražavanja podnosilaca predstavki – prva je doneta po predstavci novinara povodom osude zbog objavljivanja poverljivog materijala u vezi sa tekućom istragom; druga je doneta po predstavci izdavača novina povodom sudske zabrane protiv novina radi sprečavanja daljeg objavljivanja članka koji se odnosi na bivšeg kancelara.

Beograd, 22. decembar 2014. godine

Zašto i kakva Strategija razvoja medijske usluge radija i audio-vizuelnih medijskih usluga nam je potrebna

Miloš Stojković[1]

Članom 23. novog Zakona o elektronskim medijima („Službeni glasnik RS", br. 83/14) predviđeno je da Regulatorno telo za elektronske medije, na osnovu sagledavanja različitih potreba građana i društvenih grupa, na nacionalnom, regionalnom i lokalnom nivou, za informisanjem, obrazovanjem, kulturnim, sportskim i drugim sadržajima, na srpskom i jezicima nacionalnih manjina, u saradnji sa regulatornim telom nadležnim za elektronske komunikacije i telom nadležnim za zaštitu konkurencije, utvrđuje Predlog strategije razvoja medijske usluge radija i audio-vizuelnih medijskih usluga u Republici Srbiji, za period od sedam godina. U postupku utvrđivanja Predloga strategije sprovodi se javna rasprava. U odnosu na pitanje o svrsi Strategije, Zakon u istom članu 23. kaže da se njome, u zavisnosti od tehničkih mogućnosti, analize tržišta i potreba stanovništva, naročito uređuje vrsta medijskih sadržaja pružalaca usluga u svakoj zoni pokrivanja, kao i drugi kriterijumi na osnovu kojih se raspisuje javni konkurs.

Strategiju, koja se tada zvala Strategija razvoja radiodifuzije, imali smo i po Zakonu o radiodifuziji iz 2002. godine („Službeni glasnik RS", br. 42/02, 97/04, 76/05, 79/05 - dr. zakon, 62/06, 85/06 i 41/09). U članu 9. tog zakona bilo je propisano da Strategiju razvoja radiodifuzije donosi tadašnja Republička radiodifuzna agencija, u saradnji sa regulatornim telom nadležnim za oblast telekomunikacija i uz saglasnost Vlade Republike Srbije, na osnovu sagledavanja različitih potreba građana i društvenih grupa za informisanjem, obrazovanjem, kulturnim, sportskim i drugim sadržajima, a da je zadatak Strategije i tada bio da utvrdi broj i vrstu emitera, željene zone servisa (opsluživanja) i druge parametre za koje se raspisuje javni konkurs. Prva i jedina Strategija razvoja radiodifuzije, po Zakonu o radiodifuziji iz 2002. godine, doneta je 2005. godine i važila je do 2013. godine („Službeni glasnik RS", br. 115/05).

Prva razlika koju uočavamo jeste ta da po novom zakonu Regulatorno telo samo utvrđuje Predlog strategije, dok je donosi Vlada Republike Srbije, u skladu sa članom 45. Zakona o vladi („Službeni glasnik RS", br. 55/2005, 71/2005 - ispr., 101/2007, 65/2008, 16/2011, 68/2012 - odluka US, 72/2012, 7/2014 - odluka US i 44/2014). Po starom Zakonu o radiodifuziji, Republička radiodifuzna agencija sama je donosila Strategiju, doduše ni tada je nije mogla doneti bez saglasnosti vlade.

Druga, važnija, razlika jeste činjenica da se Strategija sada i izričito donosi i na osnovu analize tržišta, a ne samo analize potreba stanovništva. Za analize tržišta Zakon kaže samo toliko da se odnose na relevantno medijsko tržište i da ih Regulatorno telo vrši u saradnji sa telom nadležnim za zaštitu konkurencije, a u skladu sa metodologijom koju samo propisuje.

Analize tržišta, kao osnov regulacije, nisu apsolutna novost u našem pravu. Poznaju ih, na primer, Zakon o zaštiti konkurencije („Službeni glasnik RS", br. 51/2009 i 95/2013) i Zakon o elektronskim komunikacijama („Službeni glasnik RS", br. 44/2010, 60/2013 - odluka US i 62/2014). Zakon o zaštiti konkurencije govori o sektorskim analizama koje Komisija za zaštitu konkurencije vrši u određenoj grani privrede ili u različitim granama privrede, u kojima analizira određene kategorije sporazuma, a sve u slučajevima kada kretanje cena ili druge okolnosti ukazuju na mogućnost ograničavanja, narušavanja ili sprečavanja konkurencije. Zakon o elektronskim komunikacijama predviđa da Regulatorna agencija za elektronske komunikacije i poštanske usluge najmanje jednom u tri godine vrši analizu relevantnih tržišta, a po potrebi i dodatnih tržišta, uz primenu odgovarajućih preporuka Evropske unije o analizi tržišta i utvrđivanju značajne tržišne snage, i pri tome sarađuje sa organom nadležnim za zaštitu konkurencije. U oblasti elektronskih komunikacija, te odgovarajuće preporuke Evropske unije o analizi tržišta su Smernice Evropske komisije za analizu tržišta i procenu značajne

[1] Advokatska kancelarija „Živković&Samardžić", Beograd

tržišne snage na osnovu regulatornog okvira za elektronske komunikacije (Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services 2002/C 165/03), u kojima su navedeni osnovni principi za analizu tržišta kojih nacionalna regulatorna tela za elektronske komunikacije treba da se pridržavaju.

Postavlja se, međutim, pitanje koji je smisao i domašaj analize tržišta u oblasti medija. Ova analiza zapravo je složenija od analiza koje poznaju pravo konkurencije i pravo elektronskih komunikacija. Medijsko tržište gotovo je nemoguće analizirati izolovano od povezanih „uzvodnih" i „nizvodnih" tržišta, konkretno od tržišta distribucije i produkcije medijskih sadržaja. Medijsko tržište nemoguće je analizirati izolovano i od tržišta oglašavanja budući da su mediji bitna karika koja povezuje oglašivače, s jedne, i potrošače, s druge strane. Na kraju, ono što je za medije specifično jeste to da oni predstavljaju osnovni izvor informisanja građana. Zdrava konkurencija u nekim drugim industrijama dovodi do koristi za potrošače, koja se ogleda u nižim cenama, višem kvalitetu i bogatijoj ponudi proizvoda ili usluga. U medijskoj industriji ovo nije dovoljno. Funkcija medija u demokratskom društvu insistira, pored kvaliteta i bogatstva ponude, i na njenoj raznovrsnosti, raznovrsnosti izvora informacija, na odražavanju pluralističke prirode društva, drugim rečima – na onome što obično nazivamo medijskim pluralizmom.

Ako pri tom imamo u vidu još i to da analiza treba da bude osnov buduće Strategije razvoja medijske usluge radija i audio-vizuelnih medijskih usluga, jasno je da ona ne može biti samo običan pregled stanja na tržištu u prethodnom periodu. Analiza mora gledati u budućnost. U uslovima brzih i dramatičnih promena, kako tehnoloških, tako i regulatornih, bilo bi verovatno nerealno očekivati da analiza gleda u budućnost punih sedam godina, koliko traje period za koji se po Zakonu Strategija donosi, ali to, da bi ona morala anticipirati neku skoriju budućnost, uopšte ne bi smelo da se dovodi u pitanje.

Utvrđivanje vrste medijskih sadržaja pružalaca usluga u svakoj zoni pokrivanja, kao i utvrđivanje drugih kriterijuma na osnovu kojih se raspisuje javni konkurs, predstavljaju temelj regulacije sektora. Tako je bilo i pre deset godina, ali je tako i danas, bez obzira na činjenicu da je značaj terestričkog emitovanja visokom penetracijom kablovske distribucije opao. Taj temelj može biti solidan i, kao takav, obezbediti razvoj sektora, kvalitet, bogatstvo i raznovrsnost medijske ponude, na zadovoljstvo i medijske publike i oglašivača. Moguće je, naravno, da bude i drugačije, što takođe proizvodi posledice koje mogu biti bolne. Za primer ove druge situacije dovoljno je prisetiti se Strategije razvoja radiodifuzije iz 2005. godine (kojoj nije prethodila nikakva analiza tržišta), i njenih zabluda o tome da „za potrebe komercijalne radiodifuzije na svim nivoima treba obezbediti što više mesta u etru", a da je izdavanje dozvola za, u tehničkom smislu, apsolutni maksimum onoga što etar može da izdrži „u saglasnosti sa principima slobodnog tržišta", te da takva konkurencija, koju je Strategija smatrala zdravom, „može doneti samo kvalitet". Kvalitet nismo dobili, a šest godina kasnije, Medijska strategija Vlade Republike Srbije mogla je samo da konstatuje da je apsolutni maksimum onoga što etar može da izdrži rezultirao urušenim ekonomskim položajem medija, njihovom finansijskom zavisnošću, „nekvalitetnom produkcijom, tabloidizacijom i autocenzurom".

Valjana analiza medijskog tržišta, koju su ANEM i NUNS tražili još 2005. godine a tadašnja RRA smatrala suvišnom, pokazala bi to da u medijima kvantitet ne vodi nužno u kvalitet, a posebno ne u raznovrsnost sadržaja, kao i to da „principi slobodnog tržišta" neće uvek zadovoljiti ni osnovne a kamoli specifične komunikacione potrebe različitih društvenih grupa. Da je ta analiza urađena i da je gledala u budućnost, tadašnji RRA bi možda primetio da nam predstoji digitalizacija televizijskog emitovanja, te da bi, umesto izdavanja dozvola za, u tehničkom smislu, apsolutni maksimum onoga što etar može da izdrži, bilo pametnije sačuvati mesto u etru za neki budući *simulkast*.

Neprijatna iskustva sa Strategijom razvoja radiodifuzije iz 2005. godine morala bi da budu dovoljna lekcija i upozorenje svima da deceniju kasnije ne ponovimo istu grešku, i da pripremi Strategije razvoja medijske usluge radija i audio-vizuelnih medijskih usluga, ali i analizi tržišta koja toj strategiji prethodi, pristupimo krajnje odgovorno. U protivnom, još jedna decenija mogla bi biti izgubljena.

Cenzura i autocenzura u srpskim medijima

Slobodan Kremenjak[1]

Krajem 2014. godine stiče se utisak da se pojmovi cenzura i autocenzura koriste više nego ikada ranije kada se opisuje stanje u srpskim medijima. Ovaj tekst pokušava da odgovori na pitanja da li su takvi navodi tačni i opravdani, o čemu zapravo govorimo kada govorimo o cenzuri i autocenzuri i gde je izlaz iz postojeće situacije.

Čini se da u Srbiji ovoliko povika na cenzuru i autocenzuru nismo imali još od 2009. godine i usvajanja, kako je kasnije i Ustavni sud zaključio („Službeni glasnik RS", br. 89/10 i 41/11), neustavnog Zakona o izmenama i dopunama Zakona o javnom informisanju („Službeni glasnik RS", br. 71/2009).

Podsetimo, Medijska strategija iz 2011. godine („Službeni glasnik RS", br. 75/11) upravo je rezultat protesta koji je Zakon o izmenama i dopunama Zakona o javnom informisanju iz 2009. godine izazvao u stručnoj javnosti. U istoj toj Strategiji, u delu koji analizira postojeće stanje na medijskoj sceni, čak se izričito navode autocenzura, a uz nju i tabloidizacija, kao postojeće i nesporne posledice ne neposredno činjenice da je tadašnja skupštinska većina sebi dopustila usvajanje, ispostavilo se, neustavnog medijskog zakona, već urušenog ekonomskog položaja medija, finansijske zavisnosti, i neuspešno sprovedene privatizacije.

Sada je situacija ipak drugačija nego 2009. godine. Danas, izuzev Sindikata novinara Srbije (SINOS) i Profesionalnog udruženja novinara Srbije (PROUNS) koji su u septembru Ustavnom sudu Republike Srbije podneli inicijativu za ocenu ustavnosti Zakona o javnom informisanju i medijima, protiveći se pre svega odredbama o obaveznoj privatizaciji javnih medija, niko ne spori da su novi medijski zakoni, usvojeni u avgustu, u svom većem delu korak u dobrom smeru. Inicijativa SINOS-a i PROUNS-a gotovo da bi se mogla nazvati desparatnom, što nikako ne znači da oni na nju nemaju pravo. Problem je zapravo u tome što SINOS i PROUNS pokušavaju da dokažu da odredba Ustava koja, kao elementarno ljudsko pravo, jemči pravo na osnivanje medija, umesto da ograničava državu u slučaju da ona ovo pravo bilo kom pojedincu uskrati, nju naprotiv ovlašćuje da i ona sama osniva ili izdaje medije. Postavlja se pitanje gde bi nas odvelo ako bi ljudska prava, umesto kao mehanizam ograničenja vlasti države, tumačili kao mehanizam utvrđivanja novih ovlašćenja vlasti, i koliko bi to uopšte moglo pomoći da cenzure i autocenzure bude manje.

S druge strane, kao i 2009. godine, Ustav i dalje jemči slobodu mišljenja i izražavanja, kao i slobodu da se govorom, pisanjem, slikom ili na drugi način traže, primaju i šire obaveštenja i ideje. Ovo pravo na slobodu izražavanja može se zakonom ograničiti samo ako je to neophodno radi zaštite prava i ugleda drugih, čuvanja autoriteta i nepristrasnosti suda i zaštite javnog zdravlja, morala demokratskog društva i nacionalne bezbednosti Republike Srbije. Ustav takođe jemči slobodu svakoga da bez odobrenja, na način predviđen zakonom, osniva novine i druga sredstva javnog obaveštavanja, a televizijske i radio-stanice u skladu sa zakonom. Ustav izričito predviđa i da u Srbiji nema cenzure. Istina, sud može sprečiti širenje informacija i ideja putem medija, ali samo ako je to neophodno u demokratskom društvu radi sprečavanja pozivanja na nasilno rušenje Ustavom utvrđenog poretka ili narušavanje teritorijalnog integriteta Republike Srbije, sprečavanja propagiranja rata ili podstrekavanja na neposredno nasilje, ili radi sprečavanja zagovaranja rasne, nacionalne ili verske mržnje kojim se podstiče na diskriminaciju, neprijateljstvo ili nasilje.

Činjenica je da formalne cenzure, kao takve, nema. Nemamo u skorijoj praksi ni slučajeve u kojima je distribucija informacija bila zabranjivana odlukama sudova. Za mali broj takvih odluka donetih tokom

[1] Advokat; Advokatska kancelarija „Živković&Samardžić", Beograd

vanrednog stanja proglašenog nakon ubistva predsednika vlade Zorana Đinđića 2003. godine, Ustavni sud je još davno našao da su bile neustavne.

Šta se onda na srpskoj medijskoj sceni promenilo u poslednjih godinu ili nešto više dana da, ako se i složimo da formalne cenzure nema, percepcija o tome da se medijske slobode sužavaju postane toliko jaka.

Izgleda nam nesporno da opasnosti, rizici, pretnje, pritisci, ucene, kojima se izdavači medija izlažu, mogu dovesti do efekata koji su slični efektima cenzure. Ovo nije specifičnost samo Srbije. Evropski sud za ljudska prava u čitavom nizu svojih presuda, počevši još od 1996. godine i slučaja Goodwin protiv Ujedinjenog Kraljevstva, razvio je ideju o nečemu što naziva „chilling effect"; taj pojam u srpskom jeziku nikada nije dobio svoj potpuno adekvatan prevod, ali označava obeshrabrivanje legitimnog vršenja kakvog prava stavljanjem u izgled neke sankcije ili pravne mere. „Chilling effect" je zapravo sve ono što može dovesti do autocenzure.

Pitanje koje možemo postaviti je to da li u Srbiji ima obeshrabrivanja legitimog vršenja prava na slobodu izražavanja, pre svega od vlasti ali ne samo od nje, i koliko su mediji uopšte sposobni da se takvom obeshrabrivanju odupru. O ovom prvom moglo bi da se diskutuje. Jedni bi, kao argument da obeshrabrivanja legitimog vršenja prava na slobodu izražavanja ima, naveli pritvaranja ljudi zbog navodnog širenje panike komentarima na društvenim mrežama o poplavama ranije ove godine. Drugi bi, kao protivargument, mogli da navedu nešto drugo, recimo da je aktuelna, a ne neka druga vlast, ta koja je donela medijske zakone kakve su novinarska i medijska udruženja tražila godinama. Ono o čemu za diskusiju izgleda da nema prostora jeste činjenica da mediji gotovo da više uopšte i nemaju sposobnost da se odupru pritiscima koji ih obeshrabruju u legitimnom vršenju prava na slobodu izražavanja. A to je tako pre svega zato što je njihov ekonomski položaj, koji je još 2011. godine u Medijskoj strategiji ocenjen kao „urušen", danas samo još gori, a njihova finansijska zavisnost od vlasti još dublja.

Ovo nas dovodi do zaključka da pritisci na medije u Srbiji danas uopšte ne moraju biti jači nego što su bili prethodnih godina i da obeshrabrivanje legitimnog vršenja prava na slobodu izražavanja uopšte ne mora biti snažnije da bi dovelo do efekata koji su slični efektima cenzure. Urušen ekonomski položaj medija i njihova duboka finansijska zavisnost od vlasti sami po sebi dovoljni su da objasne nesporno sužavanje prostora za debatu o pitanjima od javnog interesa u medijima. Zato nas stalno insistiranje na rastućoj cenzuri ili autocenzuri ne približava rešenju i ne vodi popravljanju opšteg stanja. Nužni preduslov popravljanja opšteg stanja na srpskoj medijskoj sceni jeste unapređenje ekonomskog položaja medija i njihovo izbavljanje iz odnosa finansijske zavisnosti od vlasti i centara finansijske moći. Bez toga, povika na cenzuru ne pomaže. Ukazivanje na pritiske na medije i medijske slobode i danas je važno, kao i uvek, ali je podjednako važno i insistiranje na uređenju medijskog tržišta, na poštovanju pravila konkurencije i kontroli državne pomoći. Bez ovog potonjeg, mediji neće biti sposobni da se pritiscima odupru, koliko god glasno na pritiske ukazivali.

Transparentnost vlasništva u medijima – neophodno, da li i dovoljno?

Davor Glavaš[1]

Relativno je lako na nivou normativnog definisati važnost transparentnosti vlasništva u medijima. I u razvijenijim medijskim tržištima od posebne važnosti je da konzumenti medijskog sadržaja znaju ko vlasnički „stoji" iza objavljene informacije, kako bi se sadržaj u svakom trenutku mogao ponderisati i s (mogućeg) aspekta promocije pojedinačnog ili grupnog, ali u svakom slučaju – partikularnog – interesa, koji se, međutim, vrlo retko kao takav unapred i jasno definiše. Vrlo je često, ponovimo: i u razvijenim tržištima, reč o tome da se partikularno (interes) nastoji prezentovati kao opšte, a onda je posebno važno da se u tu jednačinu, za njeno puno razumevanje, unese i vlasnička struktura medija. U nekim situacijama, vlasnička struktura i povezani partikularni interesi mogu biti i ključ za instantno razumevanje ili pak relativno jednostavno dešifrovanje pojedine uredničke odluke. U novijoj istoriji medija, možda je, u tom kontekstu, najdalekosežniji uticaj imala informacija koju je, ne tako davne 2000. godine, prenela Fox TV. Ko, zaista, može danas kazati kako bi izgledao svet i globalni odnosi da je na ključnim izborima na Floridi (novembar 2000) Al Gor pobedio Džordža Buša? Ko može reći da li bi Al Gor, s mnogo čvrstih argumenata na svojoj strani, zatražio novo prebrojavanje glasova na Floridi koji bi mu, sasvim moguće, doneli pobedu na američkim predsedničkim izborima, da negde u kritičnom trenutku Fox TV, iz njima znanih razloga, nije svetu javio o pobedi Džordža Buša – kada za to još nije bilo službene potvrde? Nikoga, dakako, ne bi trebalo da iznenadi u najmanju ruku bliskost vlasničke strukture Fox TV-a i klana Bušovih.

Ali, utešimo se konstatacijom da je tu bila reč o ekscesu.

Za nas i ovde, daleko je važnija uloga transparentnosti vlasništva u medijima u zemljama „u tranziciji" ili takozvanim „novim demokratijama", kako ih često nazivamo, a u kojima kultura pluralizma nije (ili nije u potpunosti) usvojila standarde razdvajanja vlasničke od uređivačke funkcije u medijima, ma koliko ta granica može biti (i najčešće jeste) fluidna i u razvijenijim sredinama. Tu govorimo o situaciji u kojoj uređivačka politika služi kao direktna transmisija interesa vlasnika, često bez ikakve „tampon zone" ili zadrške. Hrvatska, recimo, ima zavidan nivo transparentnosti vlasništva u medijima, podjednako kada su u pitanju štampani i elektronski mediji. Vlasnička struktura štampanih medija dostupna je u javnom registru izdavača, dok se do vlasničke strukture svih elektronskih medija može doći uz nekoliko poteza preko web stranice regulatorne agencije. I normativno, sve je po višim evropskim standardima – do te mere, da se Hrvatska i u službenim dokumentima EU često navodi kao „primer transparentnosti" kada je u pitanju vlasništvo u medijima. Ali, nesporazum je moguć već pri prvom narednom koraku – onom, naime, koji sledi nakon, recimo, transparentnog preuzimanja vlasničke strukture nekog medija, u prvom uredničkom iskoraku novog vlasnika; nesporazum koji se zove upravo onako kako je gore već navedeno – neshvatanje odvojenosti vlasništva od uređivačke uloge.

Uzmimo jedan sasvim svež primer. Pre nekoliko sedmica jedna zagrebačka advokatska kancelarija preuzela je većinski paket deonica najvećeg izdavača u Hrvatskoj, kompanije EPH (izdavača „Jutarnjeg lista", „Globusa" i drugih publikacija). Preuzimanje je obavljeno po visokim standardima, i novi vlasnik je, takoreći u minuti po obavljenom preuzimanju, javno objavio da je postao vlasnik nekada vodeće medijske kuće u jugoistočnoj Evropi. Sve po zakonu, i sve po višoj evropskoj regulativi.

Prošlo je samo tri dana dok na (celoj) naslovnoj stranici najuticajnijeg lista novog vlasnika nije objavljena fotografija zagrebačkog gradonačelnika, koji je nedugo pre toga pušten iz istražnog zatvora da se sa slobode brani za ozbiljne optužbe za korupciju. Empatijom impregnirana fotografija snimljena

[1] Medijski ekspert

je u jednom zagrebačkom kafiću, gde je gradonačelnik, eto, „skromno i u društvu najbližih prijatelja" proslavio rođendan. Ova medijska jednačina je potpuno jednostavna i ima samo jedan „x" za njeno puno razumevanje – a to je da je novi vlasnik navedenog lista, advokat, ujedno i advokat zagrebačkog gradonačelnika, ali i dobrotvor koji je lično uplatio dva miliona evra garancije da bi se njegov klijent branio sa slobode.

Odnos vlasnička–urednička uloga ovde je doveden gotovo do karikaturalnog oblika. Kao takav, međutim, ukazuje i na mnogo dublji problem – pojam i značenje „transparentnosti vlasništva" potrebno je temeljito redefinisati. Iako je, van svake sumnje, i dalje neophodna kao minimum demokratske prakse (uz sva pripadajuća ograničenja – kako, recimo, utvrditi pravog konačnog vlasnika uz institut tajnih ortačkih ugovora i druge oblike prikrivenog i/ili fiktivnog vlasništva?), transparentnost vlasništva mora biti proširena s pitanja „ko je vlasnik" na pitanje „ko kontroliše" medije.

To je, dakako, mnogo kompleksnije pitanje, ne samo u Srbiji, zemlji s izrazito visokim udelom državno kontrolisanog oglašivačkog tržišta, već i u razvijenim demokratijama. Nije izgledno da bi set novih preporuka u tom pogledu mogao imati snagu obavezujućih zakonskih rešenja (kako, recimo, pod zajednički imenitelj u pitanjima transparentnosti vlasništva – ili definicije konflikta interesa, kao šireg pojma – staviti Švedsku i Finsku i, recimo, Bugarsku i Rumuniju?), ali neka nova razmišljanja već su dobila pravo građanstva.

Iako se i dalje striktno pazi na transparentnost vlasništva – do te mere, da se u pojedinim zemljama-članicama EU mora prijaviti svaka promena vlasničke strukture koja prelazi od 1 do 5 posto ukupnog vlasništva pojedinog medija – smatra se da su potrebne i druge mere, kao, u krajnjoj liniji, pokazatelji nezavisnosti medija.

Pre svega, reč je o preciznijem definisanju onih elementa koji, očigledno, utiču na uređivačku politiku (do nivoa cenzure i autocenzure u sredinama u kojima je „transmisija" vlasništva i uređivanja očiglednija i direktnija), a nisu nužno vezani za vlasničku strukturu. Kriza (a u nekim sredinama i slom) oglašivačkog tržišta ima kao posledicu, do neke mere i paradoksalno, sve veću zavisnost izdavača (odnosno, koncesionara elektronskih medija) u odnosu na velike oglašivače. Reč je o situaciji koja se, možda nešto oštrijim vokabularom, već naziva „piramidom straha" – vlasnici zavise od oglašivača; urednici od vlasnika; novinari od urednika – a sve posledično rezultira ili sve većom infiltracijom PR-a i prikrivenog oglašavanja u ono što bi trebalo da bude urednički oblikovan sadržaj, ili već spomenutim bujanjem cenzure i autocenzure, u svim svojim suptilnim ili otvorenim oblicima. Zaista, ima li u medijima priloga koji bi bili kritični prema nekome iz grupe pet ili deset najvećih oglašivača – a da sadržaj odražava interes javnosti, a ne interese nekog mogućeg tržišnog konkurenta?

I jedna i druga situacija – kojih su medijski profesionalci bolno svesni – ukazuju na potrebu barem delimične transparentnosti u prostoru oglašivačke politike. Nesporno je da oglašivači utiču (ili mogu uticati) na uređivačku politiku u jednakoj meri, ako ne i efikasnije od samog vlasništva. Čini se stoga gotovo kao samorazumljiva preporuka specijalizovanih tela Evropske komisije da se prostor transparentnosti proširi s postojećeg standarda javne objave (ili javno dostupne) vlasničke strukture medija, na polugodišnju ili godišnju objavu liste oglašivača koji su u datom periodu premašili udeo od 10 posto u ukupnoj marketinškoj zaradi pojedinačnog medija – sve u cilju da se publici dâ i ta, važna, informacija o mogućim uticajima na balans sadržaja koji konzumiraju, ili o mogućoj sklonosti izdavača pojedinoj poslovnoj i/ili lobističkoj grupaciji. Još jednom: legitimno je zastupati partikularne interese (nije li, na kraju krajeva, i institucija poput The New York Timesa otvoreno pristrasna kada je u pitanju, recimo, podrška jednom kandidatu na američkim predsedničkim izborima), ali je apsolutno važno da ta „pristrasnost" bude vidljiva, očita, argumentovana i, naročito, da se ne skriva ispod egide „opšteg" interesa.

Obaveza izdavača/koncesionara da javnosti pruži uvid u strukturu oglašivača može svakako biti značajan korak prema transparentnosti ili jednostavnijem prepoznavanju sadržaja, nazovimo to tako. U istom je rangu i preporuka da se javnosti stave na uvid (kvartalno, polugodišnje, godišnje) izveštaji o finansijskom poslovanju medijskih kuća. Nije, naravno, reč o nameri da se ulazi u prostor koji se

legitimno definiše kao poslovna tajna. Ali, polazeći od pretpostavke da svaki medij (bez obzira na to kako samog sebe, vlasnički i sadržajno, definiše) ima i funkciju javnog medija, čini se logičnim da se toj istoj javnosti podastru podaci o finansijskom poslovanju. Da li je javnosti važan podatak o hipotekarnom pravu koje banka „x" ima u odnosu na neku medijsku kuću? Da li je javnosti važan podatak o novom kreditu koji banka „x" daje izdavaču koji se našao u poslovnim teškoćama? Ima li javnost prava na uvid u finansijsku „karticu" izdavača, znajući da, kao što je to slučaj kod jedne veće medijske grupacije u Hrvatskoj, potraživanja samo jedne banke dvostruko premašuju aktivu tog istog izdavača? Utiče li takva situacija (nimalo unikatna) na uređivačku politiku tog izdavača, pa makar i samo u odnosu na tu banku? Svakako; kako drugačije tumačiti, recimo, situaciju da je kolektivna tužba desetina hiljada korisnika kredita vezanih uz švajcarske franke protiv najvećih banaka u Hrvatskoj u medijima dobila prostor primeren, recimo, banalnoj saobraćajnoj nesreći?

Još je jedan važan aspekt transparentnosti vlasništva koji traži i očekuje novo tumačenje.

Naime, jedan od ključnih razloga zbog kojih se insistira na transparentnosti vlasništva jeste nastojanje da se, barem na nivou formalno prijavljene strukture, spreči monopolska pozicija, u onim okvirima u kojima to regulišu nacionalna zakonodavstva. Iako je cilj i smisao ograničenja koncentracije vlasništa razumljiv (sprečavanje dominacije jedne grupacije, bila ona medijska, politička, poslovna ili kombinacija svih triju, da ima dominantan – a po definiciji partikularan – uticaj na oblikovanje javnog mnjenja), sprovođenje tog načela u praksi postaje sve kompleksnije.

Pre svega, na otvorenom i globalizovanom tržištu (a medijsko tržište je, po prirodi stvari, i jedno i drugo) sve je teže primenjivati standarde koji nisu univerzalno prihvaćeni, jer se time daje osetna početna prednost medijskim kućama koje podležu, po pitanju koncentracije vlasništva, manje restriktivnoj legislativi. Može se, potpuno opravdano, primetiti da se ovde govori o interesu kapitala a ne nužno o interesu medijskih konzumenata, ali ta razlika ionako postaje u sve većoj meri akademska, a ne praktična. Činjenica je takođe da, sa svim pozitivnim i negativnim posledicama – a prerano je još za jednu „čvrstu" ocenu – konvergencija medija i nagli rast novih komunikacijskih platformi čini dobar deo odredbi o takozvanom dijagonalnom vlasništvu naprosto zastarelim. Socijalne mreže pre desetak (preciznije: 11) godina nisu postojale – danas obuhvataju oko dve milijarde korisnika. Kako ih uopšte „obuhvatiti" legislativom, pa makar i u najelementarnijem obliku, kada je njihov rast (i aritmetički i kvantni) naprosto brži od bilo kog zakonodavca, pa i onog s najboljim namerama i/ili razumevanjem procesa?

Ukoliko na tom području tražimo ideju vodilju (s obzirom na to da, iz svih već navedenih razloga, ne možemo govoriti o sistematski oblikovanoj zajedničkoj politici), onda se ona kreće u pravcu ublažavanja odredbi o koncentraciji vlasništva (onome što se sve češće naziva „eksternim pluralizmom", odnosno postojanjem većeg broja medijskih aktera na tržištu) i stavljanju značajnijeg naglaska na tzv. „interni" pluralizam, odnosno pluralizam ponuđenog sadržaja, nezavisnog od broja izdavača/ koncesionara. U nekoliko referentnih slučajeva Evropska komisija je zaključila da, ukoliko je ispunjen uslov raznolikosti sadržaja, konsolidacija vlasništva nad medijima može imati „pozitivnu ulogu" u razvoju manjih tržišta. Kupovinom, investiranjem i razvojem regionalnih i lokalnih listova, na primer, veliki medijski koncerni doprinose održanju tog medijskog sektora, čime mogu prevladati moguće negativne posledice koncentracije vlasništva. Čak i na velikim tržištima, poput Francuske i Nemačke, koncentracija vlasništva, pa i kada su u pitanju vodeći nacionalni dnevni listovi, može se, po mišljenju Komisije, smatrati prihvatljivom, upravo zbog činjenice da su, i jedna i druga zemlja, uspele održati aktivno tržište lokalnih dnevnih listova. Na nivou dnevne prakse, zajednička nabavka novinskog papira kod štampanih medija, ili pak zajednička kupovina (odnosno, produkcija) radijskog i televizijskog programa kod elektronskih medija, može u velikoj meri smanjiti troškove poslovanja, i, barem načelno gledajući, unaprediti kvalitet ponuđenog sadržaja.

Naravno, potpuno smo svesni činjenice da je reč o rešenjima koja podrazumevaju visok nivo medijske pismenosti, kao i interakciju tržišta, javnosti, regulatornih i samoregulatornih tela – ukratko: odgovornog odnosa svih učesnika u procesu. Možemo, naravno, zaključiti da pojedine zemlje čeka dug i mukotrpan put do tog nivoa odgovornosti (pri čemu taj put ne mora uvek i ne mora nužno biti ireverzibilan), ali – alternative, zapravo, nema.

I još jedna, završna, primedba. Namerno smo u svim prethodnim pasusima, uz navođenje primera koji, doduše, nisu iz Srbije, ali mogu biti lako lokalno prepoznatljivi, govorili o „standardu" i „preporuci", a ne o „obavezi". Naime, u nekoliko navrata već spomenuta raznolikost medijskog tržišta (jedna Finska, recimo, ima između 25 i 30 puta veće oglašivačko tržište – gledajući po „glavi stanovnika" – od Srbije), kao i značajne razlike u demokratskoj i institucionalnoj praksi, čine vrlo malo verovatnim usvajanje nekog opšteg (i obaveznog) seta pravila za sve. To, naravno, nipošto ne znači da te predloge treba unapred odbaciti (jer, eto, nisu deo *acquisa* i ne ulaze ni u jedan „pregovarački paket"); naprotiv, to bi trebalo značiti obavezu njihove pažljive rasprave, kako bi se, u krajnjoj liniji, pokazalo da je i po pitanju usvajanja preporučenih standarda reč o prihvatanju smisla i „duha" bolje prakse, a ne samo slova iz poglavlja „obavezno".

Proces digitalizacije u Republici Srbiji

prof. dr Irini Reljin[1], [2], Milena Jocić Tanasković [3]

Mreža za digitalno terestričko emitovanje televizijskog signala

Republika Srbija je, kao i sve evropske zemlje, na Regionalnoj konferenciji o radio komunikacijama Međunarodne unije za telekomunikacije (ITU), održanoj juna 2006. godine u Ženevi (ITU RRC06), potpisala sporazum GE06 kojim se obavezala da najkasnije do 17. juna 2015. godine pređe na digitalno emitovanje terestričkog TV signala. Taj sporazum je Skupština Republike Srbije ratifikovala 5. maja 2010. godine.

Kada je oktobra 2008. godine tadašnje Ministarstvo za telekomunikacije i informaciono društvo (MTID) formiralo Međuresorsku radnu grupu s ciljem da izradi Nacrt strategije za prelazak sa analognog na digitalno emitovanje radio i televizijskog programa u Republici Srbiji, mnoge evropske zemlje već su ozbiljno radile na procesu digitalizacije televizije, a neke su ga već bile i završile. Ovu radnu grupu činili su, pored predstavnika MTID, i predstavnici RATEL-a (današnje Regulatorne agencije za elektronske komunikacije i poštanske usluge), RRA (današnjeg Regulatornog tela za elektronske medije) i Ministarstva kulture. Uporedo sa pisanjem te strategije, radilo se i na izdvajanju emisione tehnike iz RTS-a. To je proces koji je sproveden u svim evropskim zemljama (izuzev Slovenije) i podrazumeva da se, umesto televizijskih emitera, na medijskom tržištu razdvajaju operator mreže za distribuciju i pružalac medijskog sadržaja. Izdvajanje operatora mreže u digitalnoj tehnologiji ima veliki značaj jer se, zbog efikasnosti tehnologije, u jednom televizijskom kanalu sada prenosi veći broj televizijskih programa. Dakle, veći broj programa se multipleksira i koristi zajednički resurs, mrežu i frekvencijski kanal. Najrasprostranjenija mreža televizijskih predajnika, sa najboljim lokacijama antenskih stubova, postojala je u okviru javnog servisa - Radiodifuzne ustanove Radio televizija Srbije. Stoga je Vlada Republike Srbije usvojila Zaključak o izdvajanju emisionog sistema iz te ustanove i o formiranju novog preduzeća, decembra 2008. godine.

Strategiju za prelazak sa analognog na digitalno emitovanje radio i televizijskog programa u Republici Srbiji Vlada RS je usvojila jula 2009. godine. Ona je propisala četiri značajne stvari. Odabran je standard za kompresiju video signala MPEG-4, verzija 10. Za emitovanje digitalnog terestričkog signala je odabran standard DVB-T2. Za tip mreže je izabran jednofrekvencijski (Single Frequency Network), a za arhitekturu mreže model sa regionalnim insertovanjem programa zasnovan na uvođenju IP (Internet Protokol) tehnologije. Sve ove odluke donete su u vreme kada su navedeni standardi bili tek usvojeni i one su doprinele velikoj uštedi u korišćenju radio-frekvencijskog spektra, jer je upotrebom veoma efikasnih standarda programe moguće smestiti u mnogo manji broj frekvencijskih kanala nego što je to moguće primenom drugih, tada starih, manje efikasnih standarda za digitalno emitovanje. U međuvremenu, mnoge evropske države koje su već imale digitalno emitovanje televizijskih programa promenile su standard, kako bi efikasnim metodama oslobodile što više frekvencijskog spektra i tako obezbedile prostor za uvođenje širokopojasnih servisa u okviru mobilnih sistema. Radiofrekvencijski opseg koji se oslobađa prelaskom sa analognog na digitalno emitovanje televizijskih programa zove se digitalna dividenda. Digitalna dividenda 1 pokriva opseg frekvencija 790-862MHz, koje su opredeljene za korišćenje u mobilnim telekomunikacionim sistemima. Tako se obezbeđuje da operatori mobilnih sistema u tom opsegu primene nove tehnologije, poput LTE, to jest da razviju mrežu četvrte generacije mobilnih telekomunikacionih sistema. Odluka o nameni opsega 700MHz (digitalna dividenda 2) biće doneta na Svetskoj konferenciji o radio-komunikacijama WRC-15, koja će biti održana naredne godine.

[1] Pomoćnica ministra, Ministarstvo trgovine, turizma i telekomunikacija
[2] Profesorka, Elektrotehnički fakultet, Univerzitet u Beogradu,
[3] Savetnica u Ministarstvu trgovine, turizma i telekomunikacija

Taj radio-frekvencijski opseg će takođe biti iskorišćen za pružanje usluga širokopojasnog mobilnog pristupa.

Odluku o osnivanju Javnog preduzeća za upravljanje emisionom infrastrukturom Vlada RS je donela oktobra 2009. godine; međutim, JP ETV praktično počinje sa radom tek 1. januara 2011. godine, kada zaposleni iz RTS-a i strogo pravno gledano prelaze u novo preduzeće. Uslovi u kojima je novoosnovano preduzeće trebalo da započne proces digitalizacije televizije nisu bili zadovoljavajući. RTS nikada nije imao dovoljno sredstava za održavanje lokacija i emisione tehnike uopšte, dok je mreža predajnika praktično uništena u bombardovanju 1999. godine. Stoga je bilo neophodno obnoviti lokacije i nabaviti opremu za emitovanje i distribuciju digitalnog terestričkog TV signala. Iz tog razloga je Ministarstvo za telekomunikacije i informaciono društvo tokom 2008. i 2009. godine konkurisalo i dobilo projekat kojim se iz pretpristupnih fondova EU finansira nabavka opreme za razvoj mreže za distribuciju i emitovanje TV signala. Kao rezultat uspešno završenog tendera, dobijena je oprema u vrednosti od osam miliona evra. Iz IPA fondova su takođe bile finansirane i konsultantske usluge eksperata iz BBC World Service Trust-a koji su timu Ministarstva i JP ETV više od dve godine pomagali u sprovođenju procesa digitalizacije. Dodatnu opremu ETV je dobio kroz tender finansiran kao nacionalna kontribucija IPA projektu, i to u iznosu od 3,25 miliona evra.

Pravilnik o prelasku sa analognog na digitalno emitovanje televizijskog programa i pristupu multipleksu u terestričkoj digitalnoj radiodifuziji Ministarstvo je donelo februara 2011. godine. Ovaj Pravilnik je menjan i ažuriran u zavisnosti od toga u kojoj je fazi bio proces prelaska sa analognog na digitalno emitovanje programa.

Dakle, lokacije JP ETV morale su biti obnovljene, da bi na njima mogla da se instalira oprema. Na većini lokacija, koje su uglavnom nepristupačne i na velikim nadmorskim visinama, bilo je potrebno izvršiti sanaciju postojećih, ili izgraditi nove objekte. Ministarstvo je krajem 2011. godine raspisalo tender za obnovu 25 najvažnijih ETV-ovih lokacija, čija je rekonstrukcija pri kraju. Takođe, u toku je i obnova još 50 manjih emisionih lokacija, što se takođe finansira iz budžeta RS. Za svaku od lokacija na kojoj se izvode ozbiljniji radovi potrebno je rešiti vlasničke odnose, pribaviti lokacijske dozvole, izraditi projekte i uraditi tehničku kontolu, pribaviti građevinske dozvole i na kraju ugovoriti izvođenje i izvesti obimne građevinske radove, što uopšte nije lak niti kratkotrajan posao.

JP ETV počinje da emituje digitalni terestrički TV signal 21. marta 2012. godine, kroz takozvanu Inicijalnu mrežu, opremljenu uređajima nabavljenim u okviru IPA projekta. I pored ozbiljnog nedostatka slobodnih frekvencija, predstavnici RATEL-a i JP ETV našli su mogućnost za emitovanje TV signala, veoma malim snagama, sa 13 predajnika i dva gep filera. Digitalnim signalom bili su pokriveni veći gradovi, što je činilo oko 15% stanovnika Srbije. Uspostavljena je prva SFN mreža, a inženjeri ETV-a počeli su da stiču prva iskustva u digitalnom emitovanju. Celokupna oprema finansirana iz IPA fondova već je bila instalirana, ali nije mogla biti potpuno iskorišćena zbog nepostojanja dodatnih slobodnih frekvencija na kojima bi digitalni signal bio emitovan. U trenutku kada je jedan emiter sa nacionalnim pokrivanjem izgubio dozvolu za emitovanje programa stiču se uslovi za proširenje Inicijalne mreže. Sredinom novembra 2013. godine pušteno je u rad ukupno 35 predajnika i gep filera, tako da je signalom bilo pokriveno preko 75% stanovnika Srbije.

Da bi se proces prelaska sa analognog na digitalno emitovanje terestričkog TV signala uspešno priveo kraju, neophodno je uložiti dodatna sredstva, tako da je ETV, uz podršku Ministarstva, početkom ove godine krenuo u pregovore o kreditu sa Evropskom bankom za obnovu i razvoj (EBRD). Pregovori su uspešno završeni septembra ove godine potpisivanjem ugovora o kreditu, u maksimalnom iznosu od 24 miliona evra. Najveći deo sredstava biće iskorišćen za nabavku preostale opreme za distribuciju i emitovanje digitalnog terestričkog TV signala, kao i za rekonstrukciju dodatnih 56 lokacija sa kojih će taj signal biti emitovan.

Jedan od bitnih preduslova za uspešno sprovođenje procesa prelaska sa analognog na digitalno emitovanje programa bilo je usvajanje odgovarajuće zakonske regulative. Ministarstvo odgovorno za

telekomunikacije usvojilo je Zakon o elektronskim komunikacijama u junu 2010. godine. U međuvremenu je usvojeno više od dvadeset podzakonskih akata i nekoliko strategija koje se direktno ili indirektno odnose i na digitalizaciju. Međutim, za sprovođene ovog postupka bilo je neophodno usvojiti i skup medijskih zakona, od kojih je svakako najznačajniji Zakon o elektronskim medijima, usvojen ovog leta.

Ministarstvo trenutno radi na izmenama Pravilnika o prelasku. Ideja je da se Plan prelaska, odnosno rokovi za početak *simulkasta* i gašenje analognih servisa po zonama raspodele, promeni u odnosu na važeći Pravilnik, u smislu da će prvo biti isključeni alotmenti sa manjim brojem stanovnika, odnosno sa manjim brojem STB uređaja koje je potrebno obezbediti. Kako se datum konačnog isključenja analognog signala bude približavao, na tržištu će biti sve više odgovarajućih uređaja. Plan je da se prvo isključi alotment Vršac, 28. februara 2015. godine, za njim alotmenti u Vojvodini zaključno sa 15. martom 2015. godine, zatim Avala 31. marta 2015. godine, alotmenti Rudnik – Crni Vrh Jagodina, Deli Jovan, Tornik – Ovčar i Tupižnica 30. aprila 2015. godine i konačno, Besna Kobila, Jastrebac, Kopaonik i Cer – Maljen 29. maja 2015. godine. Istovremeno, Predlog izmena pravilnika propisuje da će se prvi multipleks popunjavati programima javnih medijskih servisa u Republici Srbiji i imaocima dozvola za emitovanje televizijskog programa na području cele Republike Srbije. S obzirom na činjenicu da u drugom multipleksu ima dovoljno mesta za sve imaoce dozvola za emitovanje televizijskog programa na regionalnim i lokalnim područjima, a u cilju davanja podrške razvoju novih tehnologija, na ovaj način će u prvom multipleksu biti mesta za programe emitovane u HD formatu.

Prijem digitalnog televizijskog signala

Proces digitalizacije, međutim, ne može biti završen dok se ne obezbedi odgovarajuća prijemnička baza onim građanima koji gledaju isključivo terestričku televiziju. Broj ovih domaćinstava je, prema podacima RATEL-a, oko milion. Da bi olakšalo građanima kupovinu STB-ova i odgovarajućih TV prijemnika, Ministarstvo je registrovalo žig garancije „digital TV" kod Zavoda za intelektualnu svojinu. Ukoliko STB uređaj ili televizor ispunjavaju tehničke zahteve određene Opštim aktom o žigu garancije „digital TV" za terestričko emitovanje televizijskih signala u RS, oni mogu biti označeni žigom garancije. Proizvođač, zastupnik, uvoznik ili prodavac prijemnika digitalnog TV signala, registrovan na teritoriji Republike Srbije, daje Ministarstvu izjavu pod punom materijalnom i krivičnom odgovornošću da prijemnik koji označava žigom garancije ispunjava uslove iz Opšteg akta. Izjava se daje na Obrascu ispunjenosti uslova za žig garancije „digital TV".

Da bi pomogla pojedinim materijalno ugroženim kategorijama stanovništva, Vlada RS je u oktobru 2014. godine usvojila Uredbu na osnovu koje će se obezbediti besplatni STB uređaji. Uredbom je određeno da pravo na dodelu besplatnih STB uređaja imaju: korisnici prava na novčanu socijalnu pomoć, korisnici prava na dodatak za pomoć i negu drugog lica po Zakonu o socijalnoj zaštiti i Zakonu o penzijskom i invalidskom osiguranju, kao i penzioneri koji žive sami i čija penzija nije veća od najnižeg iznosa penzije utvrđenog u osiguranju zaposlenih (13.288,01 dinara). Prijava za dobijanje besplatnog STB uređaja može se podneti u centrima za socijalni rad i filijalama Fonda PIO, a javni poziv ugroženim građanima Ministarstvo je objavilo 17. novembra. STB uređaji će biti dostavljeni na kućnu adresu prijavljenih građana.

Kada govorimo o promociji procesa digitalizacije, ona je prevashodno okrenuta ka elektronskim medijima, čija je obaveza da podrže proces prelaska na digitalno emitovanje obaveštavanjem građana o ključnim pitanjima. Nosioci promocije su javni servisi (RTS i RTV), a partneri u procesu su Regulatorno telo za elektronske medije (REM) i svi emiteri (nacionalni, regionalni i lokalni). Promocija će takođe obuhvatiti štampane medije, Internet portale, društvene mreže, kao i direktni kontakt sa građanima. Trenutno se na našim televizijama emituje spot „Digitalizacija je stigla", koji ima za cilj da objasni građanima kakav je uređaj neophodno nabaviti da bi se nesmetano gledala digitalna televizija.

Trenutno stanje mreže ETV-a

ETV trenutno emituje digitalni signal kroz mrežu od 74 predajnika i gep filera koji pokrivaju preko 93% stanovništva naše zemlje. Plan ETV-a je da se u konačnoj mreži signal u prvom multipleksu emituje sa 208 lokacija, dok je za drugi i treći multipleks neophodno 89 emisionih lokacija. U skladu sa važećom regulativom, obaveza JP „Emisiona tehnika i veze" je da pokrije najmanje 95% stanovništva programima u prvom multipleksu, a najmanje 90% stanovništva programima koji će biti u drugom i trećem multipleksu.

Obaveze regionalnih i lokalnih emitera u procesu digitalizacije

Koncepcija digitalne terestričke televizije zasniva se na principu da postoji operator mreže i multipleksa koji sve poslove u vezi sa distribucijom i emitovanjem TV signala preuzima od emitera. Samim tim, obaveze emitera u vezi sa distribucijom i emitovanjem televizijskog signala preuzima operator, tako da oni postaju pružaoci medijskog sadržaja. Pružalac medijskog sadržaja će morati da dopremi signal (u analognom ili digitalnom formatu) do nekog centra, takozvanog *headend*-a, gde će ETV prikupljati programe iz određenog regiona, multipleksirati ih i pripremati za emitovanje. Istovremeno, pružaoci medijskog sadržaja više neće imati obavezu plaćanja naknade za korišćenje radio-frekvencija, što takođe postaje obaveza operatora. Postavlja se pitanje koliko će usluga koju će JP ETV pružati svim nacionalnim, regionalnim i lokalnim televizijama koštati. Troškovi ETV-a su prilično veliki, neophodno je platiti sve troškove za opremu, kao i za tekuće održavanje cele mreže, odnosno za zaposlene. Izrada cenovnika po kome će JP „Emisiona tehnika i veze" naplaćivati svoje usluge je u završnoj fazi i svakako da je cilj da se pronađe rešenje koje će olakšati prelazak na novu tehnologiju svim medijima. Cena koju bi, prema trenutnom planu, plaćali javni servisi kao i televizije sa nacionalnim pokrivanjem, kreće se u okvirima troškova koje navedene televizije imaju sada, u analognom domenu. Jedna od ideja, a koja će najverovatnije biti prihvaćena, jeste to da regionalne i lokalne televizije dobiju veliki popust u nekom periodu na stvarne cene usluga koje bi inače plaćali ETV-u. Napominjemo da konačnu odluku o cenovniku donosi Vlada RS.

U skladu sa Pravilnikom o prelasku sa analognog na digitalno emitovanje, ETV je u obavezi da, najkasnije 45 dana pre isključivanja analognog i prelaska na digitalno emitovanje TV programa, dostavi Regulatornom telu za elektronske medije (REM) raspoloživ kapacitet u multipleksima. U roku od 30 dana REM mora da donese odluku o pristupu multipleksu za svakog pojedinačnog imaoca dozvole. Tehnički i ekonomski uslovi pristupa se regulišu ugovorom koji zaključuje JP ETV sa svakim pružaocem usluge televizijskog emitovanja. Ovaj ugovor samim tim postaje sastavni deo dozvole za emitovanje, tako da bez ugovora program nijedne televizije neće moći da bude emitovan od strane ETV-a.

Evropski sud za ljudska prava
Informatori o praksi Suda[1]

Informator br. 176 - jul 2014. godine

ČLAN 10.

Sloboda izražavanja

Osuda novinara zbog objavljivanja poverljivog materijala u vezi sa tekućom istragom: *povreda*

A.B. protiv Švajcarske - 56925/08
Presuda 1.7.2014. [Deo II]

Činjenice – 15. oktobra 2003. godine podnosilac predstavke, novinar, objavio je članak u nedeljnom magazinu o krivičnom postupku koji je vođen protiv vozača kome je određen pritvor nakon incidenta u kom je uleteo svojim automobilom među pešake, ubivši njih troje i povredivši osmoro, pre nego što se bacio sa Lozanskog mosta. Članak je opisao optuženog i dao kratak pregled pitanja koja su mu postavljena od strane policije i istražnog sudije, zajedno sa njegovim izjavama, i bio je ilustrovan fotografijama pisama koja je poslao sudiji. Članak takođe sadrži kratak pregled izjava supruge i doktora okrivljenog. Krivični postupak je vođen protiv novinara, na predlog javnog tužioca, zbog objavljivanja poverljivih dokumenata. U junu 2014. godine istražni sudija osudio ga je na uslovnu kaznu zatvora u trajanju od jednog meseca, koju je Policijski Sud Lozane naknadno zamenio kaznom od 4.000 švajcarskih franaka (oko 2.667 evra). Žalba podnosioca predstavke protiv te presude nije imala uspeha.

Pravo – Član 10: Kažnjavanje podnosioca predstavke zbog korišćenja i reprodukcije dokaza iz predmeta u istražnom postupku u svom članku predstavljalo je mešanje u njegovo pravo na slobodu izražavanja. To mešanje bilo je propisano zakonom. Izrečena mera težila je legitimnim ciljevima sprečavanja „otkrivanja dokaza primljenih u poverenju", „očuvanja ugleda i nepristrasnosti sudstva" i zaštite „ugleda i prava drugih".

Članak je bio baziran na sudskom postupku u vezi sa incidentom koji je, s obzirom na posebne okolnosti u kojima se dogodio, momentalno pobudio zanimanje javnosti i doveo do širokog interesovanja medija za slučaj, kao i za to kako je isti vođen od strane pravosuđa. U spornom članku podnosilac predstavke osvrnuo se na karakter okrivljenog i pokušao je da razume njegove motive, naglašavajući način na koji su policija i sudski organi postupali sa okrivljenim koji je, izgleda, imao psihijatrijske probleme. Takav članak se, stoga, odnosi na stvar koja jeste od opšteg interesa.

Podnosiocu predstavke, iskusnom novinaru, nije moglo biti nepoznato da su dokumenti koji su došli u njegov posed bili zaštićeni tajnošću sudske istrage. U datim okolnostima, on je morao da postupa u skladu sa obavezujućim odredbama koje se primenjuju u takvim slučajevima.

Ceneći značaj suprotstavljenih interesa, Sud je primetio da se Federalni sud zadržao na tome da je i prerano otkrivanje izjava okrivljenog i njegovih pisama sudiji nužno povredilo pretpostavku nevinosti optuženog i njegovo pravo na pravično suđenje. Međutim, pitanje da li je optuženi bio kriv za ono za šta je optužen nije bilo predmet spornog teksta, a prvo saslušanje po optužnici nije se dogodilo više od dve godine nakon objavljivanja spornog teksta. Dalje, postupak protiv okrivljenog vodio je sudija

[1] Izvodi iz zvaničnih „Informatora o praksi Suda" Evropskog suda za ljudska prava, dostupnih na Internet prezentaciji Suda; prevod uradila advokatska kancelarija „Živković&Samardžić", Beograd

pojedinac. Vlada nije utvrdila kako je otkrivanje ovakve vrste poverljivih informacija moglo negativno uticati na pretpostavku nevinosti okrivljenog ili na ishod suđenja.

Vlada je navela da je objavljivanjem poverljivih dokumenata iz istrage povređeno pravo na privatan život okrivljenog. Međutim, okrivljeni je propustio da koristi bilo koje pravno sredstvo koje mu je bilo na raspolaganju u skladu sa švajcarskim pravom, kojim je mogao da traži naknadu štete nanete njegovom ugledu. Drugi legitimni cilj na koji se vlada poziva postao je iz tog razloga manje ubedljiv, u okolnostima konkretnog slučaja. Vlada zato nije dovoljno opravdala sankcije određene podnosiocu predstavke povodom objavljivanja ličnih informacija koje se tiču optuženog.

U vezi sa vladinom kritikom forme predmetnog članka, trebalo bi imati u vidu da član 10 Konvencije štiti ne samo sadržaj izraženih ideja i informacija već i formu u kojoj se one prenose. Shodno tome, nije na Sudu, niti je bilo na nacionalnim sudovima, da štampi nameće sopstvene poglede u vezi sa tim kakvu tehniku izveštavanja novinari treba da primenjuju.

Konačno, iako je kazna bila izrečena za „sitan prestup", najnižu kategoriju prestupa predviđenu švajcarskim Krivičnim zakonikom, i iako su teže sankcije, uključujući i zatvorsku kaznu, mogle za ovaj prestup biti određene, „odvraćajući efekat" kazne, iako je to svojstveno svakoj krivičnoj sankciji, u konkretnom slučaju nije bio beznačajan. S tim u vezi, činjenica da je neko uopšte osuđen može u određenim slučajevima imati veći značaj od toga da mu je izrečena minimalna kazna. Sud je zato našao da je izrečena kazna nesrazmerna cilju kome se težilo.

U navedenom smislu, osuda podnosioca predstavke nije ispunila uslov postojanja „snažne društvene potrebe". Iako osnov za osudu jeste bio „relevantan", on nije bio „dovoljan" da opravda takvo mešanje u pravo podnosioca predstavke na slobodu izražavanja.

Zaključak: povreda (četiri prema tri glasa).

Član 41: nije podnet zahtev za naknadu štete.
(Videti takođe *Dupuis i ostali protiv Francuske*, 1914/02, 7. jun 2007. godine, Informator 98)

ČLAN 10

Sloboda izražavanja

Sudska zabrana protiv novina radi sprečavanja daljeg objavljivanja članka koji se odnosi na bivšeg kancelara: *povreda*

Axel Springer AG protiv Nemačke (br. 2) - 48311/10
Presuda 10.7.2014. godine [Deo V]

Činjenice – Podnosilac je društvo sa ograničenom odgovornošću Axel Springer AG. Pored drugih aktivnosti, društvo je i izdavač visoko-tiražnih dnevnih novina *Bild*. Nemački kancelar Gerhard Šreder, koji je bio na položaju od 1998. godine, izgubio je prevremene parlamentarne izbore. Na dan 9. decembra 2005. godine saopšteno je da je izabran za predsedavajućeg Nadzornog odbora nemačko-ruskog konzorcijuma (NEGP). Ugovor o izgradnji cevovoda, koji je trebalo da gradi ovaj konzorcijum, bio je potpisan deset dana pre prevremenih izbora.

U svom broju od 12. decembra 2005. godine *Bild* je na prvoj strani objavio članak pod naslovom: „Koliko on stvarno zarađuje od projekta izgradnje cevovoda? Šreder mora da otkrije svoju rusku platu". Bivši kancelar obratio se regionalnom sudu tražeći privremenu meru zabrane svakog daljeg objavljivanja dela članka koji opisuje sumnje g. Thiela, zamenika predsednika FDP Liberalno Demokratske Partije, konkretno – da je bivši kancelar dao ostavku na svoje političke funkcije zbog toga

što mu je bila ponuđena dobro plaćena pozicija u Konzorcijumu i da je odluka da raspiše prevremene izbore bila doneta isključivo iz tog razloga i rukovođena ličnim interesom. Regionalni sud zabranio je novinama da ponovo objave sporan deo članka. Odluka je potvrđena i od strane suda koji je odlučivao po žalbi, a ustavna žalba podneta od strane podnosioca predstavke odbačena je.

Pravo – Član 10: Sporan pasus, koji postavlja pitanje da li je bivši kancelar želeo da se reši javne funkcije zbog pozicije koja mu je bila ponuđena u Konzorcijumu, jasno je bio od znatnog javnog interesa, s obzirom na kancelarovu visoku poziciju i temu izveštaja. Saglasno tome, slobodu izražavanja treba u ovom slučaju široko tumačiti.

Nemački sudovi zabranili su predmetni pasus na osnovu toga što nije ispunio relevantne kriterijume za izveštavanje o sumnjama.

U članku podnosilac predstavke objavio je komentare koje je nesumnjivo dao g. Thiele. Pitanja koja je postavio bila su pre vrednosni sud nego činjenični navodi koji su podložni dokazivanju.

Pitanja, na čije se ponovno objavljivanje privremena mera odnosi, postavljena su u političkom kontekstu od opšteg interesa. Njima se bivši kancelar ne optužuje da je izvršio krivično delo, a ona osnov mogu imati u različitim činjenicama. Štaviše, šef vlade je imao brojne prilike da publikuje svoje političke odluke i da izvesti javnost o njima. Stoga, članak nije morao da sadrži delove koji idu u prilog bivšeg kancelara, a njegova funkcija ga ne ovlašćuje da uživa značajno veći stepen tolerancije od one koja se odnosi na obične građane.

Dalje, iako je podnosilac predstavke objavio sporni članak u svojim novinama, sama pitanja bila su postavljena od strane političara i člana nemačkog Parlamenta. Od novina se ne može zahtevati da sistematski proveravaju osnovanost svakog komentara učinjenog od strane jednog političara o drugom, kada su ti komentari dati u kontekstu javne političke debate. Bivši kancelar mogao je da pokrene sudski postupak protiv lica koje je dalo sporne komentare. U skladu s tim, iz načina na koji su novine pribavile komentare g. Thiele-a, činjenice da je saopštenje koje se ticalo bivšeg kancelara objavljeno samo tri dana pre objavljivanja članka, kao i generalno kratkog životnog veka vesti, nije se moglo zaključiti da podnosilac predstavke nije imao pravo da objavi komentare bez prethodne provere. Podjednako, ne može se tvrditi da nije učinjen pokušaj da se kontaktira bivši kancelar ili da on nije imao prilike da reaguje na takva pitanja.

U vezi sa načinom objavljivanja, članak nije sadržao izraze koji se odnose na bivšeg kancelara koji, po svojoj prirodi, mogu biti sporni sa aspekta prakse Suda.

Što se tiče uticaja koje je objavljivanje imalo, *Bild* se izdaje na nacionalnom nivou i ima jedan od najviših tiraža u Evropi.

Konačno, u pogledu ozbiljnosti izrečenog ograničenja, podnosiocu predstavke je određena samo privremena mera građanskog prava koja se odnosila na dalje objavljivanje jednog pasusa iz članka. I pored toga, takva zabrana mogla je imati odvraćajuće dejstvo na ostvarivanje prava na slobodu izražavanja podnosioca predstavke.

Podnosilac predstavke nije prekoračio granice novinarske slobode objavljivanjem spornog pasusa. Nije utvrđeno da je postojala bilo kakva snažna društvena potreba za zaštitom reputacije bivšeg kancelara koja bi bila iznad prava podnosioca predstavke na slobodu izražavanja i opšteg interesa u promociji te slobode u pitanjima od javnog interesa. Stoga, mešanje u konkretnom slučaju nije bilo „neophodno u demokratskom društvu".

Odluka: povreda (jednoglasno).

Član 41: nije podnet zahtev za naknadu štete.

LEGAL MONITORING OF THE SERBIAN MEDIA SCENE

INTRODUCTION

Legal monitoring of the Serbian media scene in 2014 and the findings of ANEM's monitoring team indicate the following:

The ending year 2014 was very important for the media sector due to the creation of a new and more favorable regulatory framework. The month of August saw the adoption of a set of new media laws: the Law on Public Information and Media, the Law on Electronic Media and the Law on Public Service Broadcasters, regulating the media field to a great extent in conformity with European standards and regulations. Regardless of certain shortcomings, these laws are a good basis for reforms in the media sector, since they prescribe rules that may be the key for dealing with longstanding problems, but also for the development of the whole sector. Furthermore, the regulatory framework has been improved by the amendments to certain non-media laws (supplements to the Law on Electronic Communications, as well as the termination of the validity of the disputable provisions of the Law on the Cinematography and the Law on National Councils of National Minorities, based on the decisions of the Constitutional Court about these provisions being unconstitutional), which amendments have remedied their harmful influence on the media sector. In November the Ministry of Culture and Information passed three rulebooks for the implementation of the Law on Public Information and Media, which regulate the procedure of co-financing projects for the realization of public interest in the sphere of public information, the required documentation for the registration of media in the Register, as well as the procedure of keeping records of the representatives and representative offices of foreign media. The rulebooks aim at ensuring the proper implementation of the relevant concepts contained in the said Law. In the month of December, the Regulatory Body for Electronic Media (REM), which is supposed, to pass, by February 2015, a series of bylaws for the implementation of the Law on Electronic Media released the drafts of three rulebooks concerning: the protection of the rights and interests of minors in the field of media services; making a list of the most important events and access to the same; and the manner of pronouncing measures against media services providers. A public debate on those drafts will be held by the end of the year. The year 2014 also saw the beginning of the work on the new Advertising Law, which is expected to regulate media advertising in line with media laws and European standards and regulations; the Ministry of Trade, Tourism and Telecommunications is expected to release the draft law by the end of the December. The adoption of that Law and the Regulatory Body's bylaws should create the conditions for fully implementing the new media laws, if the aforementioned Law and bylaws are in accordance with the media laws.

Apart from the improvement of the regulatory framework, there were positive developments in the area of digitalization. The preparations for the digital broadcasting of the terrestrial TV signal are nearing completion both technically and regulatory; the public awareness campaign about the digital switchover has started, but its quality is questionable; consultative meetings of the competent ministry with the media have been held; however, the price list for the services of the Public Enterprise "Broadcasting Equipment and Links" is yet to be adopted, which makes business planning by the media increasingly difficult. The media privatization process restarted after the adoption of new media laws and years of delay; voices against privatization are few are few between and speculation about the potential buyers of the remaining non-yet-privatized media abound. An important step forward in its work has been accomplished by the Regulatory Body for Electronic Media, which released in October (in addition to the bylaws in December) two press releases clarifying the manner in which that body will implement certain provisions of the Law on Electronic Media (on audio-visual commercial communications and the control of the sound level consistency) until the adoption of an adequate bylaw, which is of significant help to the media; however, activities on the new Strategy of Development of Radio and Audio-Visual Media Services is still late.

However, there was no progress as to the attacks and pressure on journalists and media. These cases persist at an equal level; only the forms of the pressure are changing. The issue of freedom of expression on the Internet (such as, for example, the removal of texts critical of the government from websites, the hacking of such websites, undermining the right to posting personal opinions on social

networks during the emergency situation in the country due to the floods, etc.) has marked the first half of 2014 and caused numerous debates about censorship and self-censorship in the Serbian media. In the second half of the year, the focus shifted to the removal of certain television debate shows, which many say result from direct government pressure. These cases have reopened the same debate and have also served as the subject for discussion at the session of the Culture and Information Committee of Parliament about freedom of media. After vicious and intolerable rows, both between the MPs of the ruling and opposition parties, as well as between the representatives of the media sector. While these rows have compromised the topic, the session ultimately ended with the adoption of the conclusions, according to which all competent bodies are expected to react to any attempt against editorial autonomy and media independence and to work hard to shed light on all attacks against journalists and the media. It remains to be seen to what extent these conclusions will contribute to changing the attitude of the competent bodies to the rights and freedoms of journalists and the media, as well as to their proper obligation to protect these rights and freedoms, but also the attitude of the journalists and the media towards their obligations and the role they have in the development of society.

The next year, 2015, will be the year when the privatization of media, as well as the digital switchover will be completed. It is also expected to show the first effects of the new media laws. Therefore, the media and journalists should take the opportunity provided by the new regulatory framework and gain the best possible position for bringing about the necessary changes in the sector. The extent of their success will also depend on raising their capacities for the proper implementation of the Law and strengthening their controlling role in that process.

Therefore, the expert articles in this publication are aimed at building those capacities of media and journalists. These articles relate to the important media issues and could contribute to their better understanding. These are: – *Why Do We Need a Strategy for the Development of Radio and Audiovisual Media Services and What Should This Strategy Be – the author:* Miloš Stojković, "Živković&Samardžić" Law Office, Belgrade; – *Censorship and Self-Censorship in the Serbian Media* – the author: Slobodan Kremenjak, attorney at law; – *Transparency of Media Ownership – Necessary, but is it Sufficient?* – the author: Davor Glavaš, media expert; – *Digitalization Process in Serbia* – the authors: Prof. Irini Reljin, PhD and Milena Jocić Tanasković, Ministry of Trade, Tourism and Telecommunications. The fifth article contains the short overview of two judgments of the European Court of Human Rights, pertaining to the application of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; both are reached in the cases where the Court established violation of the applicant's freedom of expression – the first one relates to the application of a journalist regarding conviction for the publication of materials covered by the secrecy of a pending investigation; the second concerns the application of newspaper publisher regarding injunction against the newspaper restraining further publication of article concerning former head of government.

Belgrade, 22 December 2014

Why Do We Need a Strategy for the Development of Radio and Audiovisual Media Services and What Should This Strategy Be

Miloš Stojković[1]

Article 23 of the new Law on Electronic Media ("Official Gazette of the Republic of Serbia", no. 83/14) stipulates that the Regulatory Body for Electronic Media, after considering various needs of the citizens and social groups at the national, regional and local level for information, education and cultural, sports and other content, in the Serbian language and ethnic minority languages, in cooperation with the regulatory body in charge of electronic communications and the body in charge of protection of competition, shall formulate the Draft Strategy for the Development of Radio and Audiovisual Media Services in the Republic of Serbia for a seven-year period. In the procedure of formulating the Draft Strategy a public debate will be held. Relative to the question about the purpose of the Strategy, that same Article 23 says that the Strategy shall particularly regulate (depending on technical possibilities, market analysis and population needs) the type of media content offered by service providers in each coverage zone, as well as other criteria based on which an open competition is called.

The Strategy, which was back then called the Broadcasting Development Strategy, existed also under the Broadcasting Law from 2002 ("Official Gazette of the Republic of Serbia", no. 42/02, 97/04, 76/05, 79/05 – other law, 62/06, 85/06 and 41/09). Under Article 9, the Broadcasting Development Strategy was to be passed by the then Republic Broadcasting Agency, in cooperation with the regulatory body in charge of telecommunications and with the consent of the Government of the Republic of Serbia, based on the consideration of various needs of citizens and social groups for information, education and cultural, sports and other content. The aim of the Strategy back then was to determine the number and type of broadcasters, the desired zones of service and other parameters for which the public competition is called. The first and only Broadcasting Development Strategy under the Broadcasting Law from 2002 was passed in 2005 and remained in effect until 2013 ("Official Gazette of the Republic of Serbia", no. 115/05).

The first difference we may observe is that, under the new Law, the Regulatory Body merely validates the draft Strategy, while the latter is actually passed by the Government of the Republic of Serbia, in accordance with Article 45 of the Law on Government ("Official Gazette of the Republic of Serbia", no. 55/2005, 71/2005 - corrected, 101/2007, 65/2008, 16/2011, 68/2012 – decision of the CC, 72/2012, 7/2014 – decision of the CC and 44/2014). Under the old Broadcasting Law, the Republic Broadcasting Agency enacted the Strategy independently, although it required the consent of the Government.

The second, more important difference is the fact that the Strategy is currently adopted also in accordance with a market analysis and not only a study of the population needs. Under the Law, the market analyses concern the relevant media market and are conducted by the Regulatory Body in cooperation with the body in charge of competition protection, in accordance with the methodology the Regulatory Body enacts.

The market analysis, as a basis for regulation, is not an absolute novelty in our Law. It is provided for, for example, by the Competition Protection Law ("Official Gazette of the Republic of Serbia", no. 51/2009 and 95/2013) and the Law on Electronic Communications ("Official Gazette of the Republic of Serbia", no. 44/2010, 60/2013 – decision of the CC and 62/2014). The Competition Protection Law mentions sectorial analyses the Competition Protection Commission conducts in a specific industry or

[1] "Živković&Samardžić"Law Office, Belgrade

various industries where it examines certain categories of agreements in cases where the price trends or other circumstances point to the possibility of competition being restricted, undermined or prevented. The Law on Electronic Communications stipulates that the Regulatory Agency for Electronic Communications and Postal Services shall perform at least once every three years an analysis of the relevant markets and other markets where appropriate, by applying the relevant recommendations of the European Union about market analysis and assessment of significant market power. In performing such analysis, the Agency will cooperate with the authority in charge of protecting competition. In the area of electronic communications, these relevant EU recommendations about market analysis and determining significant market force are the Guidelines of the European Commission on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services 2002/C 165/03 containing the basic principles of market analysis to be adhered to by national regulatory bodies for electronic communications.

One may ask, however, what are the purpose and the reach of the market analysis in the media sphere? This analysis is in fact more complex than those envisaged by competition law and electronic communications law. The media market is almost impossible to analyze in isolation of the related "upstream" and "downstream" markets – more specifically of the market of distribution and production of media content. The media market may not be analyzed independently of the advertising market either, since the media are the important link connecting the advertisers and the consumers. Finally, what is specific for the media is that they represent the main source of information to the citizens. Healthy competition in some other industries produces benefits for the consumers resulting in lower prices, higher quality and a more diverse offer of products or services. In the media industry this is not enough. The function of the media in a democratic society requires them (in addition to be of good quality) to be diverse in terms of sources of information, so as to reflect the pluralist nature of society – what we usually refer to as media pluralism.

Furthermore, if we also bear in mind the fact that the analysis should be the basis of the future Strategy for the Development of Radio and Audiovisual Media Services, it is clear that it may not be a mere overview of the situation on the market in the previous period. The analysis must look to the future. Amid quick and dramatic changes, both technological and regulatory, it would be unrealistic to expect the analysis to be future-oriented for a full seven years – the period for which the Strategy is enacted for by Law. At the same time, the Strategy should nevertheless anticipate the immediate future and this should never be questioned.

Determining the type of media content offered by service providers in each coverage zone, as well as setting out other criteria based on which the open competition will be called, constitutes the foundation of sectorial regulation. The situation a decade ago was the same and has not changed since, regardless of the fact that the importance of terrestrial broadcasting has decreased due to the high penetration of cable distribution. Such foundation may be solid and, as such, enable the development of the sector and bring quality and diversity of the media offer for the benefit of both the audience and the advertisers. Naturally, things could look different, with painful consequences. We should recall the Broadcasting Development Strategy from 2005 (which was not preceded by any market analysis) and its misconceptions about how "for the needs of commercial broadcasting at all levels as much air time as possible should be ensured" and that the issuance of licenses for (technically) the absolute maximum of what the spectrum may withstand is "in accordance with the principle of free market" and that such competition, considered "healthy" by the Strategy, "may bring only quality". Quality we did not get and six years later, the Media Strategy of the Government of the Republic of Serbia could only acknowledge the fact that the absolute maximum that the "spectrum" can withstand has resulted in economic decline of the media, their financial dependency, "poor quality production, tabloidization and self-censorship".

A proper analysis of the media market, which ANEM and NUNS had requested as early as back in 2005 (and which the then RBA considered unnecessary), would have shown that quantity on the media landscape does not automatically entail quality and especially not content diversity. In the same vein,

it would have shown that “free market principles” would not always satisfy even the basic communication needs of various societal groups, let alone specific ones. Had this analysis been conducted with a forward-looking approach, the then Regulatory Broadcasting Agency would maybe had noticed that the digital switchover is coming; consequently, instead of issuing licenses for (technically) the absolute maximum of what the spectrum may withstand, it would had been wiser to keep a place on the spectrum for some future simulcast.

Unpleasant experiences with the Broadcasting Development Strategy from 2005 should be a sufficient lesson and warning so that we may avoid, a decade later, making the same mistakes and be able to tackle in a responsible manner the preparation of the Strategy for the Development of Radio and Audiovisual Media Services, as well as the market analysis preceding such Strategy. Otherwise, we might lose another decade.

Censorship and Self-Censorship in the Serbian Media

Slobodan Kremenjak[1]

As of late 2014, we get the impression that concepts such as censorship and self-censorship are used more than ever before when describing the situation in the Serbian media. This text is an attempt to respond to questions as to whether these claims are accurate and justified or not and what we actually mean when we refer to the aforementioned phenomena. We will also try to suggest a way out from the current state of affairs.

There has seemingly not been such an outcry about censorship and self-censorship in our country since 2009 and the adoption of the unconstitutional (as the Constitutional Court later observed) Law on the Amendments to the Law on Public Information ("Official Gazette of the Republic of Serbia" no. 71/2009).

We hereby wish to remind that the Media Strategy from 2011 ("Official Gazette of the Republic of Serbia" no. 75/2011) was precisely the result of the protests provoked by the aforementioned Law on the Amendments to the Law on Public Information among media professionals. In the part of the said Strategy analyzing the existing state of affairs on the media landscape, self-censorship and tabloidization were expressly mentioned as the unquestionable consequences not directly of the adoption by the then parliamentary majority of the unconstitutional media law, but of the continued economic breakdown of the media, their financial dependence and failed privatization.

The current situation differs from the one in 2009. Today, except for the Trade Union of Journalists of Serbia (SINOS) and the Professional Association of Journalists of Serbia (PROUNS), which submitted in September 2014 to the Constitutional Court the initiative for assessing the constitutionality of the Law on Public Information and the Media (objecting mostly against the provisions on the mandatory privatization of public media), nobody disputes the fact that the new media laws, adopted in August 2014, are a step in the right direction. The initiative by SINOS and PROUNS could almost be called desperate, which does not mean these two associations are not entitled to such endeavors. The problem is that SINOS and PROUNS are trying to prove that the provision of the Constitution guaranteeing, as a fundamental human right, the right to establish a media outlet, entitles the state to establish and publish media instead of restricting it if it tries to deny that right to somebody. We may rightfully ask what would happen if human rights were interpreted not as a mechanism or restricting state powers, but as a channel for establishing new ones? It is unlikely that such a thing would help reduce censorship and self-censorship.

On the other hand, just like in 2009, the Constitution still guarantees freedom of opinion and expression, as well as the freedom to request, receive and disseminate information and ideas by speech, writing and image or in some other way. The right to freedom of expression may be restricted by Law only if it is necessary in order to protect the rights and reputation of other persons, uphold the authority and impartiality of courts of law and protect public health, morality of a democratic society and the national security of the Republic of Serbia. The Constitution also guarantees to all the freedom to establish, without special approval, newspapers and other media, as well as television and radio stations, in accordance with the Law. The Constitution expressly prescribes that there will be no censorship in Serbia. However, a court of law may block the dissemination of information and ideas by media if such a measure is necessary in a democratic society to prevent violent threats against the constitutional order or the territorial integrity of the Republic of Serbia, incitation to war or violence or to suppress the promotion of racial, ethnic or religious hatred inciting to discrimination, hostility or violence.

[1] Attorney at Law; The „Živković&Samardžić" Law Office, Belgrade

The fact is that there is no formal censorship in our country. We have not recently had cases where courts of law prohibited the dissemination of information. Few such decisions, passed during the state of emergency introduced in 2003 after the assassination of Prime Minister Zoran Djindjic, were later declared unconstitutional by the Constitutional Court.

What has then changed on the Serbian media landscape in the last year or so, if, while acknowledging there is no formal censorship, we must concede that the perception that the media freedoms are increasingly being suppressed has become very strong?

It seems clear that the threats, risks, pressure and blackmail faced by media publishers may result in effects similar to censorship. This is not specific only to Serbia. In a series of decisions, the European Court of Human Rights, starting from 1996 and the case Goodwin vs. the United Kingdom, developed the concept of the so-called "Chilling Effect", which has never been adequately translated in the Serbian language. This concept stands for the discouraging someone to exercise their rights by threatening them with sanctions or legal measures. The chilling effect may clearly lead to self-censorship.

It is rightful to ask if discouragement exists in Serbia with respect to the legitimate exercise of the right to freedom of expression, primarily (and not only) by the government and to what extent the media are capable to resist such discouragement. The first assertion could be debated. As an argument to demonstrate the existence of such a phenomenon, some would point to the incarceration of people for allegedly spreading panic in comments posted on social networks about the floods earlier this year. Others could contradict such claims by pointing to the fact that the current government has been the one to adopt the media laws journalists' and media associations had been requesting for years. What seems unquestionable, however, is the fact that the media have almost no capacity left to stand up to pressure discouraging them from exercising the right to freedom of expression. This is so primarily because the economic position of the media, which was branded "decayed" by the Media Strategy in 2011, is today even worse, deepening their financial dependency on the government.

This leads us to the conclusion that pressure against the media in Serbia and that discouraging the legitimate exercise of rights to freedom of expression needs not to be stronger than in previous years in order to produce effects similar to censorship. The economic decay of the media and their deep financial dependence on the government suffice to explain the undeniable narrowing of the space for debating questions of public interest in the media. Therefore, insisting on the existence of growing censorship or self-censorship does not bring us any closer to a solution and improvement of the situation. A precondition for things to get better on the Serbian media landscape is an improved economic state of the media and escaping the grip of financial dependence from the government and the centers of financial power. Failing that, condemning alleged censorship will not be of help. It remains important, of course, to keep pointing to pressure against media and media freedoms, but it is equally important to insist on the need to regulate the media market, respect competition rules and control of state aid. Without the latter, the media will not be able to resist pressure, regardless of how strong the outcry against such pressure might be.

Transparency of Media Ownership – Necessary, but is it Sufficient?

Davor Glavaš[1]

It is relatively easy, at the normative level, to define the importance of the transparency of ownership in the media. Even on developed media markets it is important for the consumers of media content to know who is the "owner" behind the information that was published or released, in order to be able at all times to weigh the content from the (potential) aspect of promoting an individual or group (in any case, particular) interest, which is, however, rarely predefined as such. We need to reiterate - very often, even on developed markets, a particular interest tends to be presented as a general interest; it is important to integrate in this equation (to better understand it) the ownership structure of the media. In certain situations, the ownership structure and the related particular interests may be key for instantly understanding or easily deciphering certain editorial decisions. In the recent history of the media, in such a context, perhaps the most impactful information was that released by Fox TV back in 2000. Who can really tell today what would the world and global relations have looked like if Al Gore had beaten George Bush in the key elections in Florida (November 2000)? Who can tell if Al Gore would have asked (with many convincing arguments) a recount of the votes in Florida, which votes would likely had brought him the victory on the US presidentials, had Fox TV not declared Bush's victory at a crucial point (for reasons known only to them) to the global audience, even before such victory was officially announced? Of course, the close relationship between the ownership structure of Fox TV and the Bush clan should not be a surprise to anyone.

Nonetheless, we will treat this as a mere incident.

For us in this country the role of transparency of media ownership in countries "in transition" (so called "emerging democracies") is much more relevant, where the culture of pluralism has not (or not entirely) embraced the standards of separating the owner's function from the editorial function in the media, regardless of how such limit may be (and most often is) fluid in more developed countries. That is the situation where editorial policy serves as a direct channel for transmitting the interest of the owner, often without any kind of "buffer zone". Croatia, for example, has an enviable degree of transparency of media ownership, both when it comes to print and electronic media. The ownership structure of print media is available in the public register, while one can learn about the ownership structure of all electronic media with a couple of clicks of the keyboard on the website of the regulatory agency. From a normative standpoint, everything is in accordance with higher European standards, to the point that Croatia is often cited in official EU documents as a "model of transparency" in relation to media ownership. However, a misunderstanding is possible as soon as taking the first next step, the one that ensues after, for example, the transparent acquisition of the ownership structure of a media outlet, in the first editorial step of the new owner – a misunderstanding that is actually (as it was already described above) a failure to understand the separation of ownership from the editorial role.

Let us take a relatively recent example. Several weeks ago, a Zagreb-based law office acquired the majority stake in the largest Croatian publisher, the company EPH (publisher of “Jutarnji list”, “Globus” and other publications). The acquisition was conducted in accordance with the highest standards and the new owner announced publicly, the minute after the acquisition was completed, its ownership of the once leading media company in the Southeast Europe. Everything was in accordance with the Law and the highest European regulations.

Only three days passed before a photograph of the Mayor of Zagreb appeared on the front page of the most influential newspaper of the new owner - the Mayor had been released a couple of hours before

[1] Media Expert

from custody pending trial for corruption. It was an empathy-laden picture taken in a coffee shop in Zagreb, where the Mayor celebrated his birthday "modestly in the company of his closest friends". This media equation is quite simple and it has only one unknown, crucial for understanding it: the new owner of the aforementioned newspaper, a lawyer, is also the lawyer of the Zagreb Mayor and a philanthropist, who has personally paid for the bail worth 2 million euros for his client to be able to be released pending trial.

This creates almost a caricature of the relationship between the owner and the editor, while pointing to a much deeper problem: the concept and meaning of "transparency of ownership" needs to be thoroughly redefined. Although it is still unquestionably necessary as a minimum of democratic practice (with all the associated limitations: how can the real owner be identified if we have secret partnership agreements and other forms of concealed and/or fictitious ownership?), the transparency of ownership must be broadened from the question "who is the owner?" to that of "who controls" the media.

The latter question is, naturally, much more complex. Not only in Serbia, a country with an extremely high share of state-controlled advertising market, but in more developed democracies too. It is unlikely that a set of new recommendations in that respect would have the strength of mandatory legislative concepts (how can one put under a common denominator, in the area of transparency of ownership or definition of conflict of interest as a broader term, Sweden and Finland or, for example, Bulgaria and Romania?). However, some new concepts have already become mainstream.

Although transparency of ownership is still strictly being observed (in some EU member countries each change in the ownership structure exceeding 1 to 5 percent of the total package in a media outlet must be reported), it is considered that other measures are also needed as an indicator of media independence.

First of all, it is about regulating more accurately the elements that visibly affect editorial policy (amounting in certain cases to censorship and self-censorship in countries where the "transmission" of ownership and content editing is more visible and straightforward), while not being automatically related to ownership structure. The crisis (and in some cases, the collapse) of the advertising market has resulted (paradoxically, to some extent) in a growing dependence of the publishers (namely the concessionaires of electronic media) on big advertisers. We are talking about the situation that is already called (perhaps in harsh vocabulary) "the pyramid of fear" – the owners depend on the advertisers; the editors depend on the owners; the journalists on the editors – and it all consequently results either in an increasing infiltration of PR and hidden advertising in what is supposed to be editorially shaped content or in the already mentioned rife censorship and self-censorship, in all of their many subtle or overt forms. Do we really have any critical content in the media against anyone from the group of five or ten largest advertisers, while at the same time reflecting the interest of the public and not those of a potential market competitor?

Both situations, painfully known to media professionals, point to the need of having at least partial transparency in the sphere of advertising policy. There is no dilemma as to whether advertisers influence (or may influence) editorial policy equally as, if not more efficiently than the owners. In that light, it is easy to understand the recommendation of specialized European Commission bodies to expand the area of transparency from the existing standard of the public disclosure (or publicly available) of media ownership structure to the semi-annual or annual disclosure of the list of advertisers exceeding (in that period) a 10% share of the total marketing revenues of a media outlet, the aim being to provide the audience with this important piece of information about potential effects on the balance of content they consume or about the leaning of the publisher towards a specific business and or lobbyist group. Once again, it is legitimate to represent specific interests (after all, is not an institution such as the New York Times biased when it openly supports a particular candidate on the US presidential elections?), but it is also crucial that the "bias" be made visible, that it is well-argued and particularly that it should not be hidden under the aegis of "general interest".

The obligation of the publisher/concessionaire to enable the public to have access to the structure of advertisers could definitely be an important step towards transparency or a simpler recognition of content, let us call it that. It is the same with the recommendation to allow the citizens insight (quarterly, semi-annually, annually) in the reports on the financial operations of media companies. This is not about violating the space that is legitimately defined as confidential. However, according to the assumption that each media outlet (regardless of how it defines itself in terms of ownership and content) has, among other things, a public function, it seems logical to disclose to the public information about financial transactions. Is information about the mortgage held by the bank "X" in a specific media company relevant to the public? Is information about the new loan granted by the bank "X" to a publisher in difficulty relevant to the citizens? Is the public entitled to have insight in the financial records of the publisher, knowing that, as it is the case with a large media group in Croatia, the claims of only one bank twice exceed the assets of that same publisher? Is such situation (which is not rare) affecting the editorial policy of the said publisher, if only in relation to that bank? It definitely does. How would we otherwise interpret the situation that the class action filed by tens of thousands of citizens, repaying their loans in Swiss Francs, against the largest banks in Croatia, was awarded as much media space in the Croatian media as a banal traffic accident?

There is another important aspect of media ownership transparency that commands and expects a new interpretation.

Namely, one of the key reasons why it is insisted on the transparency of ownership is the tendency, at the level of the formally reported structure at least, to prevent a monopoly position, in the scope regulated by national legislation. Although the purpose and rationale of restricting the concentration of media ownership is clear (preventing the dominant influence of a specific media/political/business group or a combination thereof on the shaping of public opinion), the implementation of that principle in practice is getting increasingly more complicated. To begin with, on the open and global market (and by its nature, the media market is both) it is increasingly difficult to enforce standards that are not universally accepted, since such market ensures a tangible advantage to media companies subject (in terms of ownership concentration) to less restrictive legislation. One may rightfully observe that the above concerns the interest of capital and not that of media consumers, although that difference has almost become academic rather than practical. The fact is also that, notwithstanding all positive and negative consequences (and it is true that it is too early for a definitive assessment), the convergence of different media and the sharp rise of new communication platforms have made the bulk of provisions regulating the so-called diagonal ownership simply obsolete. Ten years ago (11 to be more precise) social network did not exist, while today they have two billion users. How are they to be "encompassed" by legislation, even in the basic form, when their (arithmetical and quantum) growth is simply faster than even the best-intentioned legislator cognizant of the whole process?

If we look for a guiding principle on that terrain (since for all the aforementioned reasons we may not speak of a systemically shaped common policy), such principle will be leaning towards the alleviation of the provisions on ownership concentration (what is increasingly called "external pluralism", namely the existence of a larger number of media players on the market) and putting a greater emphasis on the so-called "internal pluralism", namely the pluralism of content offered, irrespective of the number of publishers/concessionaires. In several referential cases, the European Commission has concluded that, if the content diversity criterion has been met, the consolidation of media ownership may have a "positive role" in developing small markets. By acquiring, investing in and developing regional and local newspapers, for example, big media groups contribute to the sustenance of that media sector, thereby overcoming the potential negative consequences of ownership concentration. Even on big markets such as France and Germany, the concentration of ownership, even in the case of the leading national dailies, may, in the opinion of the Commission, be considered acceptable, precisely due to the fact that both countries have managed to maintain an active market of local daily newspapers. At the daily level, the joint procurement of printing paper in the case of print media or joint procurement of (or the production of) radio and television program in the case of electronic media, may considerably reduce business costs and (generally speaking, at least) improve the quality of content.

Naturally, we are completely aware of the fact that these are concepts requiring a high level of media literacy and interaction between the market, the public and regulatory and self-regulatory bodies; in a nutshell – a responsible relationship of all participants in the process. We can, of course, conclude that certain countries will be facing a long and painstaking path to such level of responsibility (and such path will not always be irreversible) and that there is no alternative.

Finally, one last remark. It was our intention in the above paragraphs (while citing examples that are not from Serbia, but may be locally recognizable) to speak about "the standard" and "recommendation", rather than about the "obligation". Namely, the several times mentioned diversity of the media market (the advertising market in Finland, for example, is 25 or 30 times bigger per capita than the one in Serbia), as well as the substantial differences in democratic and institutional practice, make the adoption of a general (and mandatory) set of universal rules unlikely. This is by no means to say that these suggestions should be rejected in advance (because they are not part of the *acquis* and are not encompassed by any "negotiation package"). On the contrary, this should mean that we need to debate these proposals more carefully in order to demonstrate that the essence of adopting the recommended standards is in accepting the "spirit" of good practice and not only the wording from the chapter "mandatory".

Digitalization Process in Serbia

Prof. Irini Reljin, PhD[1], [2] and Milena Jocić Tanasković [3]

The digital terrestrial network for television broadcasting

Like all other European countries, the Republic of Serbia signed in June 2006 in Geneva (ITU RRC06), at the Regional Conference on Radio Communications of the International Telecommunications Union (UTI), the GE06 Agreement, by which it undertook to switch to digital broadcasting of the terrestrial television signal by June 17, 2015 at the latest. This Agreement was ratified in the Parliament of the Republic of Serbia on May 5, 2010.

When the then Ministry of Telecommunications and Information Society (MTIS) set up in October 2008 the inter-ministerial working group tasked with drawing up the Draft Strategy for Digital Switchover from Analog to Digital Broadcasting of Radio and Television Program in the Republic of Serbia, many European countries had already been working seriously on the digitalization of television and some had even had completed the whole process. In addition to the representatives of MTIS, the working group consisted of the officials of RATEL (today the Regulatory Agency for Electronic Communications and Postal Services), the RBA (today the Regulatory Body for Electronic Media - RBEM) and the Ministry of Culture. In parallel with drawing up the Strategy, plans to extract the broadcasting equipment from RTS were also in the works. It is a process that has been implemented in all European countries (but Slovenia) involving the separation on the media market (instead of television broadcasters) between the distribution network operator and the media content provider. Separating the network operator in digital technology is highly important, since due to technological efficiency a greater number of television channels will be aired in a single TV channel. Hence, more programs are multiplexed and are using a common resource, network and frequency channel. The most extensive network of television transmitters, on the best locations for antenna poles, existed in the scope of the public service broadcaster's infrastructure – the Public Broadcaster Institution "Radio-Television of Serbia." Accordingly, the Government of the Republic of Serbia adopted in December 2008 the Conclusion on the extraction of the broadcasting system from that institution and establishing a new company.

The Government adopted the Strategy for the Transition from Analog to Digital Broadcasting of Radio and Television Program in the Republic of Serbia in July 2009. That document regulated four important issues. It opted for the MPEG-4 standard for the compression of video signal, version 10. The DVB-T2 standard was chosen for the broadcasting of the digital terrestrial signal. It also opted for the Single Frequency Network, as well as the model with regional insertion of program based on the introduction of the IP (Internet Protocol) technology for the network architecture. All these decisions were brought about at a time when the aforementioned standards were just adopted and they enabled substantial savings in the use of the radio-frequency spectrum, since the use of highly efficient standards allows for programs to be placed in far fewer frequency channels than by using old and less efficient digital broadcasting standards. In the meantime, many European countries that already had digital television broadcasting changed their standard by introducing more efficient methods to release as much space in the frequency spectrum as possible and thus secure the space for introducing broadband services in the scope of mobile systems. The radio frequency band released with the digital switchover of television programs is called the digital dividend. The digital dividend 1 covers the 790-862MHz frequency band, which was allocated for the use in mobile telecommunications systems. This will enable mobile systems operators in this frequency range to use new technologies, such as LTE, i.e.

[1] Assistent Minister, Ministry of Trade, Tourism and Telecommunications
[2] Professor,School of Electrical Engineering, University of Belgrade
[3] Adviser at the Ministry of Trade, Tourism and Telecommunications

to develop a fourth generation network of mobile telecommunication systems. The decision on allocating the 700MHz range (digital dividend 2) will be adopted on the World Radio Communications Conference WRC-15, which will be held next year. This radio frequency band will also be suited for providing the service of mobile broadband access.

The decision on the establishment of the public company for operating the broadcasting infrastructure (JP ETV) was passed by the Serbian government in October 2009. However, JP ETV actually started working on January 1, 2011, when the RTS employees were formally transferred to the new company. The conditions in which the newly-established company was to start the television digitalization process were not satisfactory. RTS has never had sufficient resources for the maintenance of locations and broadcasting equipment in general, while the transmitter network had been practically destroyed in the bombing of 1999. It was therefore necessary to renovate the locations and purchase equipment for the broadcasting and distribution of the digital terrestrial TV signal. For that reason, the then Ministry of Telecommunications and Information Society participated in 2008 and 2009 in tenders and was awarded the project involving the financing from the EU pre-accession funds of the purchase of equipment for developing the distribution and broadcasting network of the TV signal. As a result of the successful tender, equipment worth eight million euros was procured. IPA funds also served to finance consultant services provided by the experts of the BBC World Service Trust, which helped the team of the Ministry and JP ETV for more than two years to implement the digitalization process. ETV received more equipment through a tender funded as a national contribution to the IPA Project, in the amount of 3,25 million euros.

The Rulebook on the Transition from Analogue to Digital Broadcasting of Television Program and Access to Multiplex in Terrestrial Digital Broadcasting was passed by the Ministry in February 2011. This Rulebook was amended and updated depending on the stage of the digital switchover process.

Hence, JP ETV sites had to be refurbished in order to install the equipment. On most locations, which are mainly inaccessible and at high altitudes, the existing facilities had to be reconstructed or new facilities built. In late 2011, the Ministry called a tender for the reconstruction of the 25 most important ETV locations, which reconstruction is nearly complete. Furthermore, underway is the reconstruction of another 50 smaller broadcasting sites, which is also funded from the state budget. For each of these sites where serious works are being conducted it is necessary to settle the property issues, obtain location permits, draw up the designs and conduct technical control, obtain construction permits and finally hire the contractors and perform massive construction works, which is quite a feat requiring considerable effort and time.

JP ETV started to air the digital terrestrial television signal on the 21st of March 2012, through the so-called Initial Network, equipped with devices purchased in the scope of the IPA Project. Despite a serious lack of free frequencies, the representatives of RATEL and JP ETV have managed to secure the broadcasting of TV signal, with very low powers and on 13 transmitters and two gap fillers. Digital signal covered major cities, i.e. 15% of Serbia's population. The first SFN network was established and ETV engineers started to gain their first experiences in digital broadcasting. The entire equipment funded from IPA funds had already been installed, but was not fully utilized due to the absence of additional free frequencies to broadcast the digital signal. At the time when a broadcaster with national coverage lost its broadcasting license the conditions were created to expand the Initial Network. In mid-November 2013, a total of 35 transmitters and gap fillers were put into operation, resulting in more than 75% of the Serbian population covered by the signal.

In order to successfully complete the digital switchover process for the terrestrial TV signal, additional funds need to be invested and hence the ETV started earlier this year, with the assistance of the Ministry, negotiations about an EBRD loan. The negotiations were successfully finished in September this year with the signing of a loan agreement in the maximum amount of 24 million euros. The bulk of the funds will be used to purchase the remaining equipment for the distribution and broadcasting of the digital terrestrial TV signal, as well as for the reconstruction of an additional 56 locations from which this signal will be aired.

One of the main preconditions for a successful digital switchover was the adoption of adequate legislation. The Ministry in charge of telecommunications adopted the Law on Electronic Communications in June 2010. In the meantime more than twenty bylaws were adopted, as well as several strategies directly or indirectly concerning digitalization. However, this procedure required the adoption of a set of media laws, the most important of which is the Law on Electronic Media, passed in the summer of 2014.

The Ministry is currently working on the amendments to the Rulebook on the Switchover. The idea is to alter the Switchover Plan, namely the deadlines for the beginning of the simulcast and the shutdown of the analogue services by allocation zones, relative to the current Rulebook. It means that the first to be shut down will be the allotments with fewer inhabitants, i.e. fewer set-top boxes to be procured. As we approach the final shutdown of the analogue services, there will be increasingly more devices on the market. The plan is to first shut down the Vrsac allotment on February 28, 2015, followed by the allotments in Vojvodina by March 15, Avala on March 31, Rudnik-Crni vrh Jagodina, Deli Jovan, Tornik-Ovcar and Tupiznica on April 30 and finally Besna kobila, Jastrebac, Kopaonik and Cer-Maljen on May 29.

At the same time, the draft amendments to the Rulebook prescribe that the first multiplex will be supplied with programs of public service broadcasters in the Republic of Serbia and the holders of television broadcasting licenses covering the area of the whole Republic. In view of the fact that there is enough space in the second multiplex for all holders of broadcasting licenses at the regional and local level, with the aim of supporting the development of new technologies, this will result in enough space supplied in the first multiplex for programs in HD format.

Reception of digital television signal

The digitalization process, however, may not be completed until the adequate receiving base is secured for those citizens that are watching terrestrial television only. The number of these households, according to RATEL data, is about one million. In order to facilitate the purchase of STBs to citizens, as well as the adequate TV sets, the Ministry has registered the seal of warranty “Digital TV” with the Intellectual Property Institute. If the STB device or the television set comply with the technical requirements of the General Act on the Seal of Warranty “Digital TV” for terrestrial broadcasting of television signal in the Republic of Serbia, they may be marked with the warranty seal. The manufacturer, dealer, importer or seller of the digital TV signal receivers, registered on the territory of the Republic of Serbia, shall issue the Ministry a statement under full material and criminal liability that the receiver marked with a warranty seal meets the requirements from the General Act. The statement is given on a Compliance Form in relation to the requirements for the warranty seal “Digital TV”.

In order to help economically vulnerable categories of the population, the Government of Serbia adopted in October 2014 a Decree pursuant to which free STBs will be procured. The Decree prescribes that free STBs will be provided to holders of the right to financial welfare, the beneficiaries of the right to an allowance for help and care of another person under the Law on Social Welfare and the Law on Pension and Disability Insurance, as well as pensioners living alone, whose pension does not exceed the lowest amount of the pension laid down in the insurance of employees (13.288,01 dinars). The application for receiving a free STB device may be filed with centers of social work and subsidiaries of the Pension and Disability Insurance Fund. The Ministry issued a public call to disadvantaged citizens on November 17. STBs will be supplied at the home addresses indicated by the citizens.

As to the public promotion of the digital switchover, it is primarily turned towards electronic media, whose obligation is to support the switchover process by informing the citizens about key issues. The owners of the promotion process are public service broadcasters (RTS and RTV) and the partners in the process are REM and all broadcasters (national, regional and local). The promotion will also

encompass print media, Internet portals, social networks and it will also entail direct contact with citizens. Our television stations are currently airing the video clip "Digitalization has come", aiming at explaining to the citizens what kind of device they need to purchase in order to smoothly watch digital television.

The current state of the ETV network

ETV currently broadcasts digital signal through a network of 74 transmitters and gap fillers covering more than 93% of our country's population. ETV's plan is to air the signal in the final network, in the first multiplex, from 208 locations, whereas a total of 89 broadcasting sites are needed for the second and third multiplex. In accordance with the applicable regulations, JP ETV must cover at least 95% of the population with programs in the first multiplex and no less than 90% with programs that will be in the second and third multiplex.

Obligations of regional and local broadcasters in the digitalization process

The conception of digital terrestrial television is based on the principle that there is a network and multiplex operator which take over all tasks related to the distribution and broadcasting of TV signal from broadcasters. Therefore, the operators assume all the obligations of the broadcasters relative to the distribution and broadcasting of the TV signal and they hence become providers of media content. The provider of media content shall supply the signal (in analog or digital format) to a specific center – to the so-called head ends, where ETV will collect programs from a certain region, multiplex it and prepare for broadcasting. At the same time, media content providers will not have the obligation anymore to pay the fee for using radio frequencies, which also becomes the obligation of the operator. The question is how much the service JP ETV will provide to all national, regional and local TV stations will cost. The costs of ETV are substantial; all costs related to the equipment, as well as the current maintenance costs of the entire network and the employees need to be paid. Drawing up the price list according to which the JP ETV will charge for its services is in the final stage and the aim is to find a solution that will facilitate the transition to the new technology to all media. The price that the public service broadcasters, as well as national coverage stations would pay is in the range of costs currently incurred by these stations in the analog sphere. One if the ideas, which will probably be accepted, is for regional and local stations to be granted a substantial discount in a certain period on the actual price of services they would otherwise pay to ETV. We hereby stress that the final decision on the price list will be adopted by the Government of the Republic of Serbia.

In accordance with the Rulebook on the Transition from Analog to Digital Broadcasting, ETV is obligated, no later than 45 days prior to the shutting down of the analog signal and transition to digital broadcasting, to submit to REM the available capacity in multiplexes. The Regulatory Body for Electronic Media must pass a decision within 30 days on the access to multiplex for each single holder of the license. The technical and economic conditions for such access shall be regulated by a contract to be concluded by JP ETV with each television broadcasting service provider. That contract thereby becomes an integral part of the broadcasting license and without such contract no television station will be able to have its program broadcasted by ETV.

European Court of Human Rights
Information Notes on the Court's Case-Law[1]

Information Note No. 176 – July 2014

ARTICLE 10

Freedom of expression

Conviction of a journalist for the publication of materials covered by the secrecy of a pending investigation: *violation*

A.B.v. Switzerland - 56925/08
Judgment 1.7.2014 [Section II]

Facts – On 15 October 2003 the applicant, a journalist, published an article in a weekly magazine about criminal proceedings that had been brought against a motorist who had been remanded in custody after an incident in which he had rammed his car into pedestrians, killing three of them and injuring eight others, before throwing himself off the Lausanne Bridge. The article described the defendant's background and gave a summary of the questions put to him by the police and the investigating judge, together with his own statements, and was illustrated by a number of photographs of letters he had sent to the judge. The article also contained a brief summary of statements by the defendant's wife and doctor. Criminal proceedings were brought against the journalist on the initiative of the public prosecutor for publication of confidential documents. In June 2004 the investigating judge sentenced him to a suspended term of one month's imprisonment, which the Lausanne Police Court subsequently replaced by a fine of 4,000 Swiss francs (about EUR 2,667). The applicant's appeals against his conviction were unsuccessful.

Law – Article 10: The fining of the applicant for using and reproducing evidence from the judicial investigation file in his article had constituted an interference with his right to freedom of expression. That interference was prescribed by law. The measure at issue had pursued the legitimate aims of preventing the "disclosure of evidence received in confidence", of "maintaining the authority and impartiality of the judiciary" and of protecting "the reputation (and) rights of others".

The article had been based on court proceedings in connection with an incident which, having taken place in exceptional circumstances, had immediately aroused public interest and had led to widespread media interest in the case and in how it was being dealt with by the criminal justice system. In the impugned article the applicant looked at the defendant's character and tried to understand his *animus*, while highlighting the manner in which the police and court authorities were dealing with the defendant, who seemed to have psychiatric problems. Such an article thus addressed a matter that was in the general interest.

The applicant, an experienced journalist, could not have been unaware that the documents which had come into his possession were covered by the confidentiality of the judicial investigation. In those circumstances, he had been required to comply with the statutory provisions applicable in such matters.

[1] Excerpts from the official "Information Notes on the Court's case-law" of the European Court of Human Rights, available on its web site www.echr.coe.int

Concerning the weighing up of the interests at stake, the Court noted that the Federal Court had confined itself to finding that both the premature disclosure of the defendant's statements and his letters to the judge had necessarily impaired the rights of the accused to be presumed innocent and to have a fair trial. However, the question whether the accused was guilty as charged was not the subject of the article at issue and the first hearing on the charges had not taken place until more than two years after its publication. In addition, a single judge had presided over the defendant's trial. The Government had not therefore established how the disclosure of this type of confidential information could have had a negative influence on the defendant's right to be presumed innocent or on the outcome of his trial.

The Government had alleged that the disclosure of the documents covered by the confidentiality of the investigation had interfered with the defendant's right to respect for his private life. However, the defendant had failed to use any of the remedies that had been available to him under Swiss law through which he could have sought redress for the damage to his reputation. The second legitimate aim relied on by the Government thus necessarily became less persuasive in the circumstances of the case. The Government had not therefore sufficiently justified the sanction imposed on the applicant on account of the disclosure of personal information concerning the accused.

As regards the Government's criticism about the form of the article at issue, it had to be borne in mind that Article 10 of the Convention protected not only the substance of the ideas and information expressed, but also the form in which they were conveyed. It was consequently not for the Court, any more than for the national courts, to substitute its own views for those of the press as to what technique of reporting should be adopted by journalists.

Lastly, while the fine had been imposed for a "petty offence", the lowest category of offences provided for in the Swiss Criminal Code, and harsher sanctions, including a prison sentence, could have been envisaged for that offence, the chilling effect of the fine, even though it was inherent in any criminal sanction, was not insignificant in the present case. In that connection, the fact of a person's conviction might in some cases be more important than the minimal nature of the penalty imposed. The Court thus regarded the fine imposed as disproportionate to the aim pursued.

In view of the foregoing, the applicant's conviction did not meet a "pressing social need". Whilst the grounds for the conviction were "relevant", they were not "sufficient" to justify such an interference with the applicant's right to freedom of expression.

Conclusion: *violation (four votes to three).*

Article 41: no claim made in respect of damage.
(See also *Dupuis and Others v. France*, 1914/02, 7 June 2007, Information Note 98)

ARTICLE 10

Freedom of expression

Injunction against newspaper restraining further publication of article concerning former head of government: *violation*

Axel Springer AG v. Germany (no. 2) - 48311/10
Judgment 10.7.2014 [Section V]

Facts – The applicant was the limited company Axel Springer AG. Among other activities, it was the publisher of the mass-circulation daily newspaper *Bild*. The German Chancellor Gerhard Schröder, in power since 1998, had lost early parliamentary elections. On 9 December 2005 it was announced that he had been appointed chairman of the supervisory board of a German-Russian consortium (NEGP).

The contract for construction of a pipeline to be built by this consortium had been signed ten days before the early election.

In its edition of 12 December 2005 *Bild* published a front-page article with the headline: "What does he really earn from the pipeline project? Schröder must reveal his Russian salary". The former Chancellor applied to the regional court for an injunction prohibiting any further publication of a passage describing the suspicions of Mr Thiele, deputy president of the FDP Liberal Democrat Party, namely that the former Chancellor had resigned from his political functions because he had been offered a lucrative position in the consortium and that the decision to call early elections had been taken with that sole aim, motivated by self-interest. The regional court ordered the newspaper not to re-publish the disputed part of the article. That judgment was upheld by the court of appeal, and a constitutional appeal by the applicant company against the court of appeal's judgment was dismissed.

Law – Article 10: The disputed passage, which posed the question of whether the former Chancellor had wished to divest himself of his office on account of the position he had been offered in the consortium, was clearly of considerable public interest, given the former Chancellor's high profile and the subject-matter of the report. Accordingly, freedom of expression had to be interpreted broadly in this case.

The German courts had forbidden the passage in question on the ground that it did not meet the relevant criteria for reporting suspicions.

In the article, the applicant company had reported comments undoubtedly made by Mr Thiele. The questions raised by him were more akin to a value judgment than to factual allegations that were susceptible to proof.

The questions covered by the injunction were made in a political context of general interest, did not allege that the former Chancellor had committed a criminal office and might have had a basis in various facts. Moreover, a head of government had numerous opportunities to publicise his or her political choices and to inform the public of them. Thus, the article had not been required to contain elements in support of the former Chancellor, and his office did not enable him to enjoy significantly greater tolerance than that extended to private citizens.

Further, although the applicant company had published the disputed passage in its newspaper, the questions themselves had been raised by a politician and member of the German Parliament. A newspaper could not be required to verify systematically the merits of every comment made by one politician about another where such comments were made in a context of public political debate. The former Chancellor could have brought judicial proceedings against the person who had made the impugned comments. Accordingly, having regard to the manner in which the newspaper had obtained Mr Thiele's comments and taking account of the very recent nature of the announcement about the former Chancellor, issued three days prior to the article's publication, and also of the generally transient nature of news events, there was no indication that the applicant company was not entitled to publish these comments without carrying out other preliminary checks. Equally, it could not be argued that no attempt had been made to contact the former Chancellor or that he had not had an opportunity to react to such questions.

With regard to the manner of publication, the article did not contain expressions concerning the former Chancellor which, by their very nature, could raise an issue under the Court's case-law.

As to the impact of the publication, the *Bild* newspaper was published nationally, and had one of the highest circulation figures in Europe.

Lastly, with regard to the severity of the penalty imposed, the applicant company had merely been the subject of a civil-law injunction against further publication of one passage from the article. Nonetheless, this prohibition could have had a chilling effect on the exercise of the applicant company's freedom of expression.

Regard being had to the foregoing, the applicant company had not exceeded the limits of journalistic freedom in publishing the impugned passage. It had not been established that there existed any pressing social need for placing the protection of the reputation of the former Chancellor above the applicant company's right to freedom of expression and the general interest in promoting this freedom where issues of public interest were concerned. It followed that the interference in question had not been "necessary in a democratic society".

Conclusion: *violation (unanimously).*

Article 41: no claim made in respect of damage.

ANEM Publikacija XI Pravni monitoring medijske scene u Srbiji
ANEM Publication XI Legal Monitoring of the Serbian Media Scene

Izdavač/Publisher:
Asocijacija nezavisnih elektronskih medija (ANEM)
Association of Independent Electronic Media (ANEM)
www.anem.org.rs

Pripremio i uredio/Prepared and edited by:
ANEM

Lektura/Proofreading:
ANEM

Prevod/Translation:
Bogdan Petrović

Beograd, decembar 2014/Belgrade, December 2014